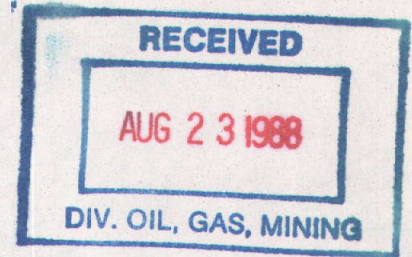


M/053/002

CLIFFORD V. DUNN #933  
P. O. Box 2318  
St. George, Utah 84770  
Telephone: 801-628-5405



BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

IN THE MATTER OF REQUEST )  
FOR AGENCY ACTION OF )  
5 M, INCORPORATED REQUESTING )  
DETERMINATION OF CLAIMANT )  
AND ESTABLISHMENT OF )  
RECLAMATION BOND )

Docket No.: \_\_\_\_\_

Cause No.: \_\_\_\_\_

Submitted by )  
)  
)  
5 M, INCORPORATED )  
A Utah Corporation, )  
)  
Petitioner. )

PETITION FOR DETERMINATION OF CLAIMANT AND  
ESTABLISHMENT OF RECLAMATION BOND

Pursuant to Section 40-8-8 of the Utah Code, as amended, the Petitioner hereby requests that the Board of Oil, Gas and Mining ("Board") enter a determination that Petitioner is the "rightful claimant" to receive a previously forfeited reclamation bond, pursuant to Section 40-8-14 (6), Utah Code Annotated; and further, that the "Board", upon making such determination that Petitioner is the rightful claimant, cause the reclamation bond previously forfeited to the Division in the amount of \$55,210 to act as a continuing reclamation bond, pursuant to Section 40-8-14 to support the Reclamation Plan of 5 M, Incorporated for the Silver Reef mine in Washington

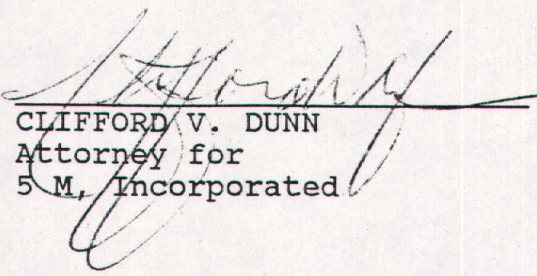


County, Utah.

This petition is supported by a Memorandum filed contemporaneously herewith.

DATED this 7th day of August, 1988.

  
JERRY GLAZIER, President

  
CLIFFORD V. DUNN  
Attorney for  
5 M, Incorporated

#### PROOF OF SERVICE

I hereby certify that I have this date served the foregoing instrument upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, with postage prepaid, to:

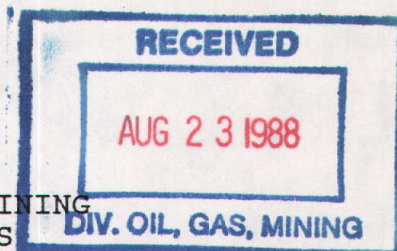
Kerley Mining Chemicals, Inc.  
Santo Thomas Rt. Box 73  
Sahuarita, AZ 85629

Dated at St. George, Utah, this 16th day of August, 1988.

wp:5m.pld



CLIFFORD V. DUNN #933  
P. O. Box 2318  
St. George, Utah 84770  
Telephone: 801-628-5405



BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

IN THE MATTER OF REQUEST )  
FOR AGENCY ACTION OF )  
5 M, INCORPORATED REQUESTING )  
DETERMINATION OF CLAIMANT )  
AND ESTABLISHMENT OF )  
RECLAMATION BOND )

Docket No.: \_\_\_\_\_

Cause No.: \_\_\_\_\_

Submitted by )  
 )  
5 M, INCORPORATED )  
A Utah Corporation, )  
 )  
Petitioner. )

MEMORANDUM IN SUPPORT OF PETITION FOR DETERMINATION  
OF RIGHTFUL CLAIMANT AND ESTABLISHMENT  
OF RECLAMATION BOND

The following Memorandum is provided to the Board of Oil, Gas and Mining ("Board"), whereby Petitioner has requested agency action to determine the rightful claimant of a previously forfeited reclamation bond for the Silver Reef mine in the amount of \$55,210, pursuant to 40-8-14 (6), Utah Code Annotated; and further, to use such previously forfeited reclamation bond as a reclamation bond to support the mining operations and reclamation plan previously proposed by the Petitioner for the Silver Reef Mine.

PETITIONER'S POSITION

It is the Petitioner's position that Petitioner is



entitled to the funds forfeited, pursuant to the reclamation bond established by Kerley Mining Chemicals, Inc., and that said monies should be posted as a reclamation bond directly from the Petitioner, 5 M, Incorporated, to insure the reclamation of the Silver Reef mine, based upon the following arguments.

#### PETITIONER'S ASSERTIONS

1. PETITIONER, 5 M, INCORPORATED, IS THE "RIGHTFUL CLAIMANT" TO THE FORFEITED BOND, PURSUANT TO 40-8-14 (6) UTAH CODE, AS AMENDED.

2. PETITIONER, 5 M, INCORPORATED, HAS FILED AN APPROPRIATE RECLAMATION PLAN, TO BE CONDUCTED AT THE EXPENSE OF 5 M, INCORPORATED WHICH WILL RECLAIM THE LAND MINED AS REQUIRED, PURSUANT TO 40-8-14 (6).

3. PETITIONER, 5 M, INCORPORATED, IS THE SUCCESSOR OPERATOR, PURSUANT TO 40-8-19, UTAH CODE, AS AMENDED; AND THEREFORE, THE RECLAMATION BOND SHOULD BE TRANSFERRED TO SECURE THE RECLAMATION OF THE LAND BY THE SUCCESSOR OPERATOR.

4. DETERMINING THAT PETITIONER IS THE "RIGHTFUL CLAIMANT", AND RE-ESTABLISHING THE RECLAMATION BOND FOR THE SILVER REEF MINE FULFILLS THE LEGISLATIVE PURPOSE OF THE MINED LAND RECLAMATION ACT FOR THE STATE OF UTAH WITHOUT INCREASING BURDENS UPON THE STATE OF UTAH NATURAL RESOURCES, DIVISION OF OIL, GAS AND MINING.

#### STATEMENT OF FACTS

On or about the 23rd day of August, 1984, 5 M,



Incorporated, and Kerley Mining Chemicals, Inc. entered into a "Mining Lease and Option to Purchase." Said Mining Lease and Option to Purchase is attached hereto as Exhibit "A", and by this reference made a part hereof. Pursuant to said Mining Lease and Option to Purchase, Kerley Mining Chemicals, Inc. became liable and responsible for all reclamation requirements pursuant to the Utah Mine Land Reclamation Act, Utah Code Annotated Section 41-8-1 to 23, (see Paragraph 13 at Page 37 and 38 of Exhibit "A".) As part of this responsibility, Kerley Mining Chemicals, Inc. posted a \$55,210 cash Reclamation Bond with the Division of Oil, Gas and Mining.

Pursuant to said agreement, (Paragraph 13 at Page 37 and 38 of Exhibit "A"), in the event the Mining Lease and Option to Purchase was terminated prior to February 1, 1985, 5 M, Incorporated was required to provide a substitute bond, and deliver the \$55,210 reclamation bond to Kerley Mining Chemicals, Inc.

Pursuant to Paragraphs 3 and 4 of Paragraph 6 (f) (3-4), of Exhibit "A", the Petitioner would be responsible and liable for all reclamation obligations after the termination of the Mining Lease and Option to Purchase.

Thereafter, on or about the 27th day of February, 1985, an Agreement and First Amendment of Contract was entered into specifically providing for a loan arrangement of \$75,000 which facilitated the cash payments by Kerley Mining Chemicals, Inc. to the Petitioner. The Agreement and First Amendment of



Contract dated on or about the 27th day of February, 1985, is attached hereto as Exhibit "B", and by this reference made a part hereof. It was the express understanding of the parties that Kerley Mining Chemicals, Inc. would pay the \$75,000 loan obligation to Zion National Bank as a part of the payments towards the obligations of the agreements contained in Exhibit "A" and Exhibit "B".

Further, pursuant to that agreement, the parties discussed the reclamation bond vis-a-vis the termination of Kerley Mining Chemicals' interest in the mining property in question. It is the clear intent of Paragraph 4 at Page 3 of Exhibit "B" to provide an ongoing reclamation bond upon the site, and provide a means whereby 5 M, Incorporated could repay Kerley Mining Chemicals, Incorporated should the lease be terminated.

On or about the 11th day of June, 1985, an "Agreement and Second Amendment" to the Contract was entered into by and between Kerley Mining Chemicals, Incorporated, and 5 M, Incorporated, a copy of which is attached as Exhibit "C", and by this reference made a part hereof. The reclamation bond was again discussed in Paragraph 5 at Page 6 of Exhibit "C". The clear intent of that paragraph was again to provide a means whereby the reclamation bond would stay with the property, and inure to the benefit of the Owner (5 M, Incorporated) in the event of the termination of the lease. The only provision was that under specific circumstances, the



Owner, 5 M, Incorporated, would reimburse Kerley Mining Chemicals, Incorporated for the monies placed as a reclamation bond.

On or about the 31st day of August, 1985, an "Extension Agreement" was entered into by and between 5 M, Incorporated and Kerley Mining Chemicals, Inc., a copy of which is attached as Exhibit "D", and by this reference made a part hereof. There is no reference to the reclamation bond on the Extension Agreement, but said Exhibit "D" primarily provides for an extension of time in which Kerley Mining Chemicals, Inc. could pay the obligations incurred; specifically the \$75,000 loan obligation.

On or about the 1st day of November, 1985, the Mining Lease and Option to Purchase, together with all amendments, attached as Exhibits "A" through "D", were terminated, and Kerley Mining Chemicals, Inc. had no further rights in and to the mining property, with the exception of the possible right to reimbursement for the use of the reclamation bond.

Thereafter, and as late as June 12, 1986, Kerley Mining Chemicals, Inc., by and through Kerley Industries, was still communicating with the Division of Natural Resources. A copy of such communication, dated June 12, 1986, is attached hereto as Exhibit "E", and by this reference made a part hereof. Such communication and dealings by and between the Division of Natural Resources and Kerley Mining Chemicals, Inc. made it extremely difficult for 5 M, Incorporated to function with



regard to the specific Silver Reef Mine. A copy of the responsive letter dated June 27, 1986, from the attorney for 5 M, Incorporated at that time is attached as Exhibit "F", and by this reference made a part hereof.

On or before the 1st day of January, 1988, the reclamation bond, pursuant to appropriate notice, was forfeited by action of the Division.

On or about the 25th day of March, 1988, Petitioner proposed a reclamation plan for the Silver Reef Mine, a copy of which is attached hereto as Exhibit "G", and by this reference made a part hereof.

Petitioner has proceeded to implement the reclamation plan as is evidenced by a letter from the Division of April 7, 1988, a copy of which is attached hereto as Exhibit "H", and by this reference made a part hereof.

#### SUMMARY OF STATEMENT OF FACTS

The Petitioner (5 M, Incorporated) is the owner of patented and unpatented mining claims known as the Silver Reef Mine. In 1984, the Petitioner entered into an agreement with Kerley Mining Chemicals, Inc. to mine the Silver Reef mine. Part of that agreement included the posting of a reclamation bond in the sum of \$55,210 by Kerley Mining Chemicals, Inc. Petitioner and Kerley Mining Chemicals, Inc. agreed that, in the event the lease was terminated, the Petitioner would be totally responsible for the reclamation of the land, and in the event the lease was terminated prior to October 25, 1985,



the Petitioner would need to reimburse Kerley Mining Chemicals, Inc. The mining lease was not terminated before October 25, 1985. Petitioner was not required to reimburse Kerley Mining Chemicals, Inc. for the reclamation bond. It is the clear intent of Petitioner and Kerley Mining Chemicals, Inc. that the reclamation bond stay with the land in order to comply with 40-8-14.

#### ARGUMENT

1. PETITIONER, 5 M, INCORPORATED, IS THE "RIGHTFUL CLAIMANT" TO THE FORFEITED BOND, PURSUANT TO 40-8-14 (6), UTAH CODE, AS AMENDED.

Section 40-8-14 (6), Utah Code, as amended, states in part, "The forfeited surety shall be used only for the reclamation of the land to which it relates and any residual amount returned to the rightful claimant." (Emphasis added).

There is no question that the reclamation bond has been forfeited by Kerley Mining Chemicals, Inc. The only question remains is who is the rightful claimant to the bond. There are two possible claimants; one is Kerley Mining Chemicals, Inc., and the other is 5 M, Incorporated, the Petitioner. After careful review of the Statement of Facts, as contained above with regard to the agreements attached hereto as Exhibits "A" through "D", the following is clear:

1. That Kerley Mining Chemicals, Inc. posted the reclamation bond of \$55,210 for the purpose of facilitating mining operations of the Silver Reef mine.



2. That, pursuant to successive agreements, amendments to agreements, and extensions, it was the clear intent and understanding of the parties that the reclamation bond would stay with, and inure to the benefit of the land in question. This is supported by the fact that the only responsibility of the Petitioner, once that Petitioner had assumed total and complete responsibility for the reclamation of the land, as required by the agreements, was to reimburse Kerley Mining Chemicals, Inc. for the amount of the bond; provided that the mining lease was terminated before October 25, 1985. The Lease was not terminated before October 25, 1985, therefore, when the Petitioner assumed all responsibility for reclamation, and all liability for reclamation. Petitioner also assumed the benefits of the reclamation bond, and Petitioner had no further obligation to reimburse Kerley Mining Chemicals, Inc.

3. Due to default on the terms and conditions of the contracts as Exhibits "A" through "D", Kerley Mining Chemicals, Inc. has no further interest in the Silver Reef mine, and therefore, the only "rightful claimant" is the Petitioner.

One of the primary functions of the Division of Oil, Gas and Mining is to ensure that the Mined Land Reclamation Act is enforced to protect the lands of the State of Utah. In order to fulfill this purpose, the Legislature enacted Section 40-8-14 of said Act to provide for sureties and bonds to ensure



appropriate reclamation. Forfeiture of these bonds is not meant to penalize companies or individuals, but to provide money whereby the Division can itself complete reclamation of a site.

In this particular situation, we have the following two options. The State of Utah Natural Resources Division of Oil, Gas and Mining can take the \$55,210 and perform a complete reclamation on the project, and then deliver any remaining monies, if any, to the rightful claimant (the Petitioner); or the Division may require the Petitioner to perform the appropriate reclamation, along with its mining activities, and pursuant to the reclamation plan attached hereto as Exhibit "G".

Since the Petitioner is the interested party, in that it is the owner of both patented and unpatented claims, and since a reclamation plan has not only been proposed, but it has been at least partially implemented, it seems to be folly to have the Division be required to obtain a separate contractor for reclamation. It appears as though the delivery of the \$55,210 in the form of a continuing reclamation bond for the benefit of the Petitioner fulfills the purpose of 40-8-14 (6), in that it will ensure the reclamation of the project, and it will facilitate the appropriate and environmentally sound mining of the project, thereby complying with the intention of the State of Utah Mined Land Reclamation Act (See 40-8-2 (1) and 40-8-2 (2)).



It seems more efficient to allow the money to be used as a reclamation bond to ensure reclamation than for the Division to take the money and reclaim the project and deliver the balance to Petitioner.

REQUIREMENTS OF MINED LAND RECLAMATION ACT FULFILLED

PETITIONER, 5 M, INCORPORATED, HAS FILED AN APPROPRIATE RECLAMATION PLAN, TO BE CONDUCTED AT THE EXPENSE OF 5 M, INCORPORATED WHICH WILL RECLAIM THE LAND MINED AS REQUIRED, PURSUANT TO 40-8-14 (6).

Petitioner's reclamation plan will fulfill all of the requirements of the State of Utah Mined Land Reclamation Act, and Petitioner has already begun the actual work of reclamation.

APPROPRIATE SUCCESSOR

PETITIONER, 5 M, INCORPORATED, IS THE SUCCESSOR OPERATOR, PURSUANT TO 40-8-19, UTAH CODE, AS AMENDED; AND THEREFORE, THE RECLAMATION BOND SHOULD BE TRANSFERRED TO SECURE THE RECLAMATION OF THE LAND BY THE SUCCESSOR OPERATOR.

After a careful review of the agreements attached as Exhibits "A" through "D", with specific attention to the duties and responsibilities retained by the Petitioner, with regard to reclamation, Petitioner is clearly the successor operator within the definition of the Statute. Section 40-8-19 of the Utah Code, as amended, states in part:

"Upon the satisfactory assumption of such responsibilities by the successor operator, under the conditions approved by the Division, the approved notice



of intention shall be transferred to the successor operator."

Petitioner respectfully submits that there is no question that the Petitioner has satisfactorily assumed all the responsibilities of the prior operator as the successor operator, and that the notice of intention has been effectively transferred to Petitioner.

In view of the fact that the Petitioner is the appropriate successor operator, and even though the bond has been forfeited, it appears to be appropriate to re-establish the bond which was in place to facilitate the mining and reclamation of the land based on the original notice of intention, as established by the Division.

FULFILLING THE PURPOSE OF THE MINED LAND  
RECLAMATION ACT WITHOUT INCREASING BURDEN

DETERMINING THAT PETITIONER'S THE "RIGHTFUL CLAIMANT",  
AND RE-ESTABLISHING THE RECLAMATION BOND FOR THE SILVER REEF  
MINE FULFILLS THE LEGISLATIVE PURPOSE OF THE MINED LAND  
RECLAMATION ACT FOR THE STATE OF UTAH WITHOUT INCREASING  
BURDENS UPON THE DIVISION OF OIL, GAS AND MINING.

The Mined Land Reclamation Act was passed and implemented by the Legislature of the State of Utah to allow for and encourage mining within the State of Utah, while at the same time "...minimize (ing) undesirable affects on the surroundings." 40-8-2 (2).

In this situation we have an owner which has proposed a reclamation plan which is acceptable to the Division of Oil,



Gas and Mining. The Petitioner has, already begun the reclamation process. See Exhibit "G". In fulfilling the overall purpose of the act it seems prudent to encourage compliance with the Act by and through private entities. The forfeiture provisions of the Act, require the Division to perform the reclamation work itself. This is the work the Petitioner has agreed to do. The only question is what will happen to the \$55,210. Once the Petitioner completes the reclamation as required, then the Division must return the excess funds to the Petitioner as the rightful claimant. Those excess funds, if the work is completed by the Petitioner would equal \$55,210 as the amount of the bond. It seems to be prudent, therefore, to simply avoid the problems, difficulties, and the headaches of the Division by re-establishing the bond in the name of the rightful claimant so that appropriate operations can be conducted.

#### SUMMARY

The Petitioner has a strong desire to comply with all requirements of the Division of Oil, Gas and Mining. The Petitioner, further, has the desire to effectively mine and reclaim the Silver Reef mine area. The Petitioner is the successor in interest to all rights previously held by Kerley Mining Chemicals, Inc.

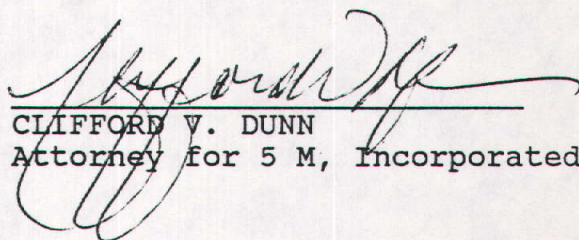
It is, therefore, respectfully submitted that, as the rightful claimant, and in an effort to fulfill the purposes of the Mined Land Reclamation Act of the State of Utah, that the



bond previously forfeited be delivered to the Petitioner, and established by the Petitioner as an appropriate reclamation bond on the land it was originally intended to benefit.

Respectfully submitted this 12<sup>th</sup> day of August,

1988.

  
CLIFFORD V. DUNN  
Attorney for 5 M, Incorporated

wp:5mmemo.pld



EXHIBIT "A"



EXHIBIT "A" TO PRELIMINARY OPTION AGREEMENT

MINING LEASE

AND

OPTION TO PURCHASE

between

5M, INCORPORATED

and

KERLEY MINING <sup>CHEMICALS</sup> ~~MINERALS~~, INC.

Re: Silver Reef Mine,

Washington County, Utah

Date: August - 1984



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APPENDIX II

EXHIBIT LIST

EXHIBIT A	Description of all properties subject matter of the Mining Lease and Option to Purchase
EXHIBIT B	Map of all properties subject to lease and/or sale
EXHIBIT C	Bill of Sale - Installment purchase at Minesite \$102,000.00
EXHIBIT D	Copy of Warranty DEed - Tech Sym to 5M, 1977
EXHIBIT E	Copy of Quit Calim Deed - Tech Sym to 5M, 1977
EXHIBIT F	Emily Jane Lease - McMullin to 5M Inc.
EXHIBIT G	Mining Lease Tech - Sym to 5M - 1977
EXHIBIT H	Lease and Option to Purchase Agreement, Eager-Scholzen, June 10, 1977
EXHIBIT I	Title Opinion - Patented Claims - October 31, 1977
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EXHIBIT K	Title Opinion - Fee Lands - November 2, 1977
EXHIBIT L	Property Report - July 26, 1984
EXHIBIT M	Utah Deed of Trust with Assignment of Rents and Security Agreement (with attachments 1-6 of Partial Reconveyances)
EXHIBIT N	Memorandum of Lease, 5M - Kerley



## DOCUMENT SUMMARY

Document Id: 0297A  
Document Name: Mining Lease & Option  
Operator: 08/22/84 D.F.  
Author: T. Anderson

Comments: 5M Incorporated

## STATISTICS

OPERATION	DATE	TIME	WORKTIME	KEYSTROKES
Created	08/22/84	11:39	6:35	29694
Last Revised	08/23/84	10:03	:15	561
Last Printed	08/23/84	10:22		
Last Archived	08/22/84	18:18	onto Diskette 0021A	
Total Pages:	61	Total Worktime:	6:50	
Total Lines:	1448	Total Keystrokes:	30255	

Pages to be printed 1

TO: WORD PROCESSING

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Need By DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

COMMENTS:



MINING LEASE AND OPTION TO PURCHASE

This Mining Lease and Option to Purchase Agreement, hereinafter referred to as "Mining Lease", is made and entered into effective as of the 23<sup>rd</sup> day of August, 1984, by and between 5M, INCORPORATED, a Utah Corporation, hereinafter referred to as the "Owner" which has an office and place of business at P.O. Box 752, Hurricane, Utah 84737, and KERLEY MINING CHEMICALS, INC., an Arizona corporation, hereinafter referred to as the "Company" which has an office and place of business at Santo Tomas Rt. Box 73, Sahuarita, Arizona 85629.

Recitals

A. The Owner owns certain patented and unpatented mining claims and some deeded mineral rights situated in Washington County, State of Utah, more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein (the "Property"), and Exhibit "B", attached hereto and by this reference incorporated herein (the "Map").

B. The Owner desires to lease the Property to the Company, and the Company desires to lease the Property from the Owner, together with the right to prospect on, explore for and



mine all minerals in and upon the Property, subject to the restrictions hereinafter set forth.

#### Agreement

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby admitted and acknowledged, the parties agree as follows:

1. Lease:

(a) The Owner hereby leases to the Company, the exclusive right and privilege, subject to exceptions hereinafter stated, during the term of this Mining Lease to prospect for, explore for, develop, mine (by open pit, strip, underground, solution mining or any other method, including any method hereafter developed), extract, mill, store, remove and market therefrom all ores, minerals and materials of whatsoever nature or sort (herein designated as "Leased Substances"), excepting Oil and Gas, and to use and consume so much of the surface and subsurface thereof as may be necessary, useful or convenient for the full enjoyment of all of the rights herein granted. Company is hereby further granted the exclusive right to construct and use structures, facilities, equipment roadways, railroads and haulageways, and all other appurtenances (herein called "Production Facilities") installed on the Leased Premises for the purpose of exploring for



developing and mining, producing, removing, treating or transporting metals, ores, minerals or materials from the Leased Premises or from adjoining or nearby property owned or controlled by Company, and the right to mine and remove Leased Substances from the Leased Premises by means of shafts, openings or pits which may be made in or upon adjoining or nearby property.

b) The Owner further gives the Company the right and privilege, subject to the restrictions in (c) below, to do those things reasonably necessary to accomplish the purposes and rights set forth in this Mining Lease, including, but not limited to, the right and privilege to enter upon the Property for purposes of surveying, exploring for, prospecting for, sampling or mining minerals; to construct, use, maintain, repair, replace and relocate buildings, roads, waste dumps, ditches, pipelines, power and communication lines, structures, processing facilities, utilities and other improvements and facilities reasonably required by the Company for the full enjoyment of the Property for the purposes set forth in this Mining Lease; to use so much of the Property and the surface and subsurface thereof as may be reasonably necessary convenient or suitable for the storage and/or disposal of wastes, residues, or other by products of exploration or development operations; to use so much of the surface and



subsurface of the property as may be reasonably necessary convenient, suitable for or incidental to any of the rights and privileges of the Company hereunder or otherwise reasonably necessary to effect the purpose of this Mining Lease; to use the easements and all rights-of-way for ingress and egress to and from the Property to which the Owner may be entitled; to use without cost, except for annual assessments to Leeds Water Company, any surface and underground water belonging to the Owner thereto now existing or subsequently discovered or developed in or on the property to which rights or use may be obtained or perfected; to mine, remove, and process minerals and ores containing subject minerals from the Property.

Company shall have the right, at any time during the term hereof, to stockpile any material mined or produced from the Leased Premises at such place or places as Company may elect, either upon the Leased Premises at such place or places as Company may elect, either upon the Leased Premises or upon any other lands owned or controlled by Company. The royalty rights of Owner in and to any such material stockpiled on other lands shall not be divested by the removal thereof from the Leased Premises, but shall be the same in all respects as though such materials had been stockpiled on the Leased Premises. If such other lands are now owned by a third party, Company shall make a good faith attempt to obtain from the owners thereof a



properly executed instrument under which the owners of the other lands agree to recognize the interest of Owner in materials stockpiled on such other lands. Company shall have the further right, at any time during the term hereof, to stockpile on the Leased Premises any ore or material mined or produced from property other than the leased premises. Owner agrees to recognize the rights and interests of others in such ores and materials stockpiled on the Leased Premises and to permit the removal thereof by Company at any time during the term of this Lease, or by the owners thereof for a reasonable time after termination of this Lease, all without liability or expense to Owner. All stockpiles on the Leased Premises shall be placed so as not to interfere with mining operations on the Leased Premises. Waste, overburden, surface stripping and other materials from the Leased Premises may be deposited off the Leased Premises and may be deposited on the Leased Premises only if the same will not interfere with mining operations on the Leased Premises.

(c) Ditches and pipelines may be rerouted only in a manner that will not interfere with lower irrigation water users in the Connally Fields and other areas nearby or adjacent to the property. Furthermore, substations, water wells, buildings, leach pads, stripping circuit, powerlines, poles and all other equipment cannot be removed or damaged without



Owner's permission within the first two years of this lease or earlier in the event Company commences actual on-site construction of a minimum 1000 ton per day ore processing facility, excepting equipment purchased pursuant to Section 5 herein. Such permission shall not be unreasonably withheld.

The rights herein granted include the right of the Company to conduct commercial mining operations on the Property, but only upon timely payment to the Owner of amounts due under this Agreement.

Owner retains and reserves the right to explore, develop and produce oil and gas deposits, if any, on the property. It is expressly agreed, however, that the oil and gas rights reserved by Owner shall be subordinated to the rights granted to Company herein. Owner agrees that in the event of exploitation of its oil and gas rights it will avoid and refrain from unreasonable interference with Company's use of the properties leased or conveyed under the terms of this agreement.

2. Term:

This Mining Lease shall commence on the date hereof and the primary term shall continue for 20 years. The Mining Lease shall terminate before such date if Company elects to terminate this lease, or if the Company defaults hereunder, and the Owner declares a default hereunder, and the Company



does not cure that default as provided herein. The Company shall have the right to extensions of the lease upon conclusion of the initial 20 years as hereinafter set forth.

Upon expiration of the initial lease term the Company shall be entitled to two (2) extensions, each for a period of ten years and subject to the same terms set forth herein governing the initial lease period, with the exception that for each of the ten (10) year lease extension periods the minimum annual payment for that period shall be an amount equal to the dollar value of \$500,000.00 per year in the year 1984. The lease may continue on a year to year basis thereafter, however, subject to the agreement and negotiation at that time. In any event, the Company shall have a first right of refusal as to any lease or sale arrangement which may be offered to Owner for disposition or operation of the property for mining purposes only by third parties within a period of five (5) years following expiration of the second ten year extension, as long as no termination of the lease has occurred.

3. Production Royalty Payments:

(a) The Owner reserves a perpetual, nonparticipating and non cost-bearing royalty (hereinafter the "Production Royalty"), subject to exercise of the option to purchase as set forth in Section 14 herein, on all subject minerals produced from the property. All costs of any kind



such as: exploring for, mining, producing and processing subject minerals are to be borne solely by the Company. The Owner's Production Royalty shall be a part of all subject minerals produced by the Company by any method of mining and extraction from the ground or ores, including leaching, and insitu mining, and it shall be a part of all ores, metals, concentrates, precipitates, cements, electro-winnings, yellowcake, bullion, dorebar or other metal and metal bearing products containing subject minerals that are mined, removed, processed, stockpiled, or disposed of from the Property. Owner shall have the right to select the product being produced by Company for purposes of taking in kind.

(b) The Production Royalty shall be equal to three per cent (3%) of the subject minerals produced from the Property during the period of first five (5) years of production, providing that the first five years of production is within the first seven (7) years of the lease term; six per cent (6%) for the next five (5) years of the lease term and ten per cent (10%) thereafter for the duration of the lease term and throughout all extensions. No deductions or charges are to be made against the owner for exploration, drilling, mining, milling, freighting, processing, smelting, refining, selling, or any other costs or activities of the Company. However, at such time as Owner becomes entitled under the terms of the



lease to a production royalty of six per cent (6%) or more as set forth in this Section, and in the event the ore processing and/or product refining is being conducted by third parties, Company may deduct standard freight and processing charges of such third parties.

(c) Production royalty will be paid to Owner monthly in cash for Owner's share of the production of the subject mineral. Owner may, however, receive payment in kind by notifying Company in writing within ten (10) days prior to the commencement of each annual calendar quarter (three month period) that it will require payment in kind, rather than in cash. In such event, monthly in kind payments shall be due within ten (10) days of the last day of the month of each month in the annual calendar quarter. Payment in cash shall be due within twenty (20) days following the last day of each month.

In the event Company fails to deliver a payment in kind to Owner as a result of unintentional oversight on the part of Company personnel in communicating to personnel at the mine site Owner's request to take production in kind, Company may pay the production royalty due in cash or, upon written authorization of Owner, make up the in kind payment by adding it to the royalty payment due in the following month.

(d) The Owner shall, at its own expense, have the right to inspect and copy, at Owner's expense, and the



Company shall make available upon reasonable notice, all records, data, computations, certificates, accountings, or other documents or information necessary for the Owner to verify that its Production Royalty has been properly calculated and delivered. Owner may also employ, on the property, its own employee to verify compliance with this Agreement. This employee shall have reasonable access to production and mining operation areas, however, he shall not interfere with or obstruct any Company activity. He shall be authorized to reasonably measure ore, weigh other products and take and analyze reasonable samples thereof in accordance with sound mining and metallurgical practice, and engage in all such inspection and activities as are necessary to protect Owner's interests. Any such inspection by Owner shall be at the sole risk of Owner, and Owner shall hold Company harmless for any injury, including death to employees or agents of Owner, unless such injury or death was the result of gross negligence or willful acts by Company.

(e) In the event it becomes necessary to value production royalty received by Owner in kind for the purpose of credit against minimum lease payments to Owner or for any other reason, then the average monthly price as quoted by Metals Week publications for all payable minerals contained in such in kind payments, shall be utilized along with the assay and the weight



of the materials taken by Owner in kind together with results of umpiring of samples, if requested by either party as hereinafter set forth, to establish the value of such in kind royalty payment.

(f) Umpiring of Samples.

(1). In the event it is necessary hereunder to establish value of the products mined by sampling (i.e., crediting in kind royalties to minimum lease payments), the parties shall mutually agree to a sampling procedure and then develop the samples into three equal splits with Owner having one split mutually sent to Union Assay Office Inc., Salt Lake City, Utah, as an independent Umpire to hold and assay in the event the parties do not agree as to the result of their own assays.

(2). If all individually contained element assays prepared by the parties are within 5% of each other, the two assays shall be averaged and such average shall be final as between the parties as to the assay of the sample in question.

(3). If such assays are not within 5% as to all individual contained elements, then either party may request that the designated Umpire assay the split held by it. The assay of the party that deviates the least from the Umpire's assay shall then be averaged with the Umpire's assay to determine the assay values of the sample to be used by the



parties in determining the accepted assay of the sample in question. The party whose assay deviates the most from the Umpire's assay shall pay all costs of the Umpire.

(4). In the event disputes shall arise between third party processor and the Company, no costs of such dispute shall be born by the Owner.

4. Minimum Lease Payments:

(a) Upon execution of this Mining Lease, and annually thereafter, the Company is required to make certain minimum payments to the Owner. All payments to the Owner are non-refundable as of the date such payment is made and effected.

(b) The minimum lease payment schedule for the primary term of this Mining Lease is as follows:

<u>Date of Payment</u>	<u>Year</u>	<u>Amount of Payment</u>
Upon exercise of preliminary option	1984	\$ 100,000
February 1st	1985	\$ 150,000
May 15	1985	\$ 500,000
May 15	1986	\$ 600,000
May 15	1987	\$ 600,000
May 15	1988	\$ 550,000
May 15	1989	\$ 500,000

and \$500,000 upon each Anniversary date thereafter through the year 2003 for a total payment of \$10,000,000.00.



All Minimum Lease Payments shall be credited toward the Production Royalty to be paid by Company to Owner. Minimum Lease Payments shall be considered delinquent if not paid on or before their due date. In such event, delinquent payments shall bear interest at a rate of two per cent (2%) above New York Citicorp Bank prime.

(c) The minimum lease payments recited in paragraph (b) above may be partially deferred after three (3) years from the date hereof if Company has continued mining and processing operations on the leased property which are unprofitable for a period of six (6) consecutive calendar months. Such right to partially defer shall extend to a maximum period of five (5) years following the six month unprofitable period of operation, and such minimum annual payments may be reduced during the deferment period to minimum annual lease payments as follows:

1st full year of deferment	\$100,000
2nd full year of deferment	\$150,000
3rd full year of deferment	\$200,000
4th full year of deferment	\$250,000
5th full year of deferment	\$250,000

Such deferred minimum annual lease payments shall be prorated over the lease year according to the actual percentage of the lease year that such deferment is applicable. For example, if



Company fails to operate profitably for a period of six consecutive months during a lease year for which the minimum lease payment in advance was \$500,000, and after such period there are 45 days remaining in the lease year, then there shall be a deferment credit to Company of \$49,315.07, calculated as follows:

$$\begin{array}{rcl}
 \frac{\text{days remaining in lease year}}{\text{days per year}} & \times & \begin{array}{l} \text{[original minimum deferred rate} \\ \text{[lease payment} \quad \text{ - } \quad \text{minimum lease pymt.} \end{array} \\
 = \frac{45}{365} & \times & (\$500,000 - \$100,000) = \underline{\$49,315.07}
 \end{array}$$

Such amount may be credited against the next minimum lease payment due Owner, without interest, upon commencement of profitable operations on the leased property by Owner, but such repayment shall be made in equal installments on the dates minimum lease payments are due over the next period of profitable operations which period is equal to the period of deferred minimum lease payments. Thus, if the deferred period resulted in three minimum lease payments being deferred, then Company shall repay Owner in three equal installments in addition to the three normal minimum lease payments due after the deferred period. Such deferred payments do not have to be repaid to Owner after termination of this lease if Owner terminates this lease for any reason.



(d) As used in paragraph (c) above, unprofitable mining and processing operations shall mean negative cash flow for operations conducted upon the leased property, specifically including mining, g milling and processing, and for an related operations conducted off of the leased property but for the benefit of materials mined from leased property without accounting for non cash items such as depreciation and depletion, and without accounting for overhead items for related operations or management located or associated with facilities or offices other than operations on the leased property, and without accounting for interest of any loans of the Company of any nature, but with accounting for all payments made to Owner hereunder. Such accounting shall be cash basis accounting as reasonably utilized by the mining industry and acceptable to the Internal Revenue Service and shall be consistently applied. The deferment provisions of paragraph (c) above may not be invoked by Company unless Company has not maintained a mining operation of a minimum of 21,667 tons per month for a period of six (6) consecutive months, or if it conducts mining and processing operations in an imprudent manner according to standards, practices and principles reasonably utilized by the mining industry.



5. Purchase of Equipment:

Company agrees to purchase certain equipment from Owner for the sum of \$102,000.00 upon the following terms and conditions:

(\$30,600.00) shall be paid on November 1, 1984 with the remaining principal balance of Seventy One Thousand Four Hundred Dollars (\$71,400.00) and interest on the unpaid principal at the rate of nine percent (9%) per annum payable in thirty six (36) equal monthly principal installments due on the first day of each month beginning with December 1, 1985.

The equipment purchased by Company pursuant to the foregoing terms is described as follows:

-One <sup>625</sup> 600 KVA Diesel Generator located on the mine premises. <i>Enterprise, S/N 96367 Type L-10325</i>	\$50,000.00
<i>Volts 4160 Phase 3, RPM 900</i>	
-One stainless steel EIMCO belt extractor and filter, at mine site. <i>2612 extractor 316 SS No 64175-01</i>	\$30,000.00
-One Worthington Electric Horizontal Air Compressor (900 CFM, 35 PSI, 100 HP), at mine site. <i>S/N L70267</i>	\$10,000.00
-Three Substation Transformers at mine site (2,000 kw). <i>3-667 KVA, McLoney, 36,200</i>	\$12,000.00
<i>Primary, 2520/4360 V secondary w/ Taps above &amp; below. oil filled pad mount</i>	
TOTAL.....	\$102,000.00

Any and all encumbrances upon said equipment shall be released within thirty (30) days of the date of execution of this agreement. Copies of all releases shall be provided by Owner to Company. In the event encumbrances are not released,



Company shall have the right of offset on amounts due under the terms of the Purchase of Equipment terms of this agreement.

Upon final payment of all principal and interest due, Owner shall deliver to Company a Bill of Sale, a copy of which is attached hereto as Exhibit C.

6. Termination of Lease:

(a) The Owner shall have the right to terminate this Mining Lease if the Company is in default of any of its obligations hereunder and does not cure such default after notice of the default by the Owner. If the Company has failed to make any annual payment required by Section 4, or any Production Royalties due Owner, it shall have only twenty (20) days after receipt of written notice of default from the Owner to make such payments.

(b) If the Owner alleges any other default, or if it disputes the calculation of Production Royalty payments, the Company shall have thirty (30) days after it receives written notice of the alleged default to cure such default or commence to correct such default with diligence if such default cannot be cured within thirty (30) days. The notice of default shall identify the nature of the default with particularity and inform the Company what the Owner considers to be sufficient to cure the default. If the Company fails to cure a default within the twenty (20) or thirty (30) day periods, set forth



above, the Owner may terminate this Mining Lease upon written notice of termination to the Company.

(c) If the Company disputes the existence of a default or the Owner's method to cure it, within thirty (30) days after it receives the above notice of the alleged default it may file suit in The Federal District Court for the State of Utah, or in the Third District Court, State of Utah, in the event the Federal Court does not have jurisdiction to resolve the dispute. If the Court determines the Company did not act in bad faith, and that it had a reasonable basis upon which to believe it was not in default or the Owner's method of curing it was unreasonable, the Owner may not terminate this Mining Lease if the Company promptly and in good faith commences to correct the default and diligently continues to do so.

(d) The Company shall have the right to terminate this Mining Lease at any time upon thirty (30) day's written notice, but, if such notice is given within ninety (90) days before the end of the federal assessment work year, the Company shall be obligated to perform all required assessment work and recordings in the name of the Owner (and the Company, if necessary) on the Property for that assessment work year. Upon such termination, by either party, the Company agrees to make available for inspection and copying at the Owner's expense, all factual information concerning the Property that



has not previously been furnished to the Owner, including physical delivery of all cores, samples and/or analysis. Such termination shall not affect or release any previously accrued liabilities of the Company, and Company may not serve notice of termination without being current on all payments due hereunder to the Owner.

(e) If this Mining Lease is terminated as permitted herein, the Company shall surrender peaceably to the Owner a recordable release of its rights hereunder as set forth in the Escrow Instructions, Appendix I.

(f) Upon termination of this Mining Lease, for any reason by either party, the Company shall remove itself within ninety (90) days following the date of termination, unless it has installed on-site permanent facilities valued in excess of Two Million Dollars (\$2,000,000.00), in which event Company shall have one (1) year to remove itself from the property. Company shall, nevertheless, be obligated to pay on a pro rata basis a portion of the Minimum Rental Payment covering the period of time it remains on the property following termination, except during the first two years of this lease, following the November 1, 1984 Minimum Lease Payment date. Notwithstanding the obligation upon the Company to remove itself in such manner, the Company hereby grants to the Owner the right to its personal property and all plant



milling and processing equipment situated upon the Property as of ninety-one (91) days or one (1) year from the date of termination as the case may be. The scope and extent of such right is that:

(1) The Company shall have the obligation to leave, and not remove, all permanent fixtures on the Property such as tracks, timber, chutes, ladders, ties, plumbing, wire and wiring, piping for air or ventilation, water developed on the property and similar improvements.

(2) If Company solicits a bona fide third party offer for purchase of all plant milling and processing equipment and personal property, other than that described in 6(f)(1) immediately above, then Owner shall have a period of thirty (30) days following tender of the third party offer to match the same. In the event Owner notifies Company in writing of its intention to match the third party offer, it shall have a period of six (6) months to secure and obtain financing. During this six (6) month period, Company shall remain upon the property, however, it shall not be obligated to pay further Minimum Lease Payments under this Agreement during or after the six (6) month period described in 6(f)(1) above. Furthermore, the time for removal by Company shall be extended by the amount of time allowed Owner hereunder to obtain financing.

(3) After the ninety (90) day time limit or one year as the case may be, for the Company to remove itself



from the Property, the Company shall have no further right to come upon the Property for any purpose whatsoever or to use, operate or remove any of the equipment, except to complete reclamation as requested by Owner unless Owner agrees to assume the obligation, nor to use any of the roads, shafts, mines, residue, tailings, buildings, equipment, or facilities upon or in any manner associated with the Property. It is the intention of the parties that termination shall effect a complete and final severance between them as to use of the Property and equipment in all respects, except performance of reclamation work by the Company should Owner request the reclamation work be completed.

(4) In the event Owner requests that reclamation work not be immediately performed by Company, it shall assume all reclamation obligations of the Company prior to the date upon which Company actually vacates the property following termination or within six (6) months following termination, whichever is longer.

(5) In the event the Company shall serve Notice of Termination which causes a due date of a Minimum Lease Payment as set forth in 4(b) above, to fall within the period allowed for removal as set forth in 6(f) above, Company shall be obligated to pay, as of the due date, a portion of the Minimum Lease Payment due prorated by the number of days from



the due date of the Minimum Lease Payment until the completing date of actual removal from the property of all personal property, plant, milling and processing equipment other than that which Company is required to leave on the property pursuant to 6(f)(1) above. (6) During this period, the Company shall not conduct any mining or ore processing activities whatsoever without the express written approval of Owner.

(g) Partial Termination: Subject to the provisions of paragraph (d) above, Company shall have the right to terminate this lease as to any one or more individual parcels of the property leased to Company hereunder, but any partial termination hereunder shall not reduce the minimum lease payments required under provision 4 above.

7. The Company's Rights in and on the Property:

In addition to rights previously granted herein, the Owner hereby grants the Company the right to do any or all of the following on the Property:

(a) The right to commingle rock, ore, minerals, or other products produced by the Company from any portion of the Property with rock, ores, minerals, or other products from other adjoining lands or nearby properties at any stage or stages of mining, treating, milling, leaching, upgrading, or processing. Before commingling, the Company shall sufficiently



crush, weigh, measure, and sample such rock, ore, minerals, or other products in accordance with customary mining, processing and metallurgical practice, and shall assay such samples and materials to determine the mineral content thereof. The Company shall keep accurate records of such mineral content and shall make such records available to the Owner at all reasonable times. At least ten (10) days before the Company commences commingling, the Company shall advise the Owner of specific procedures to be used to crush, weigh, sample and assay the ores from the various other properties. Within five (5) days thereafter, Owner shall give its consent as to the use of such procedures, which consent shall not unreasonably be withheld. If the Owner does not consent, it shall advise the Company in writing what additional reasonable measures it would require before giving its consent.

(b) Owner under this agreement is to receive an overriding non participating, non cost bearing Production Royalty of two per cent (2%) of the gross production of minerals mined from similar ore bodies within one and one-half (1 1/2) miles from Owner's property in the event Company acquires the same. For purposes of this agreement, similar ore bodies shall mean those structures which constitute a portion of the continuous down dip extension of the horizontal beddings



now constituting the ore body under the claims described in Exhibit A.

(c) The right and obligation to perform, file and record, all annual assessment work for and in the name of the Owner (and Company, if necessary) with the County, State and Federal Agencies as required. Assessment work shall be performed prior to July 1st of each year. Copies of all the recorded affidavits of annual assessment work shall be delivered to the Owner no later than July 31st of each year. All federal filings shall be delivered, with appropriate recording information thereon, to Owner on or before December 1st of each year. If copies of assessment affidavits are not delivered, the Owner can perform the assessment work and file and record all required documents necessary at the cost of the Company. For the assessment work due September 1, 1984, Owner shall cooperate in providing all documentary information available, and Company shall provide all engineering, geological and metallurgical data and flow sheet design prepared in conjunction with the property and the parties shall jointly file the appropriate proof of labor documents.

(d) The right to file in the name of Owner (and Company if necessary) with the Bureau of Land Management pursuant to the Federal Land Policy and Management Act of 1976, documents required by such act.



(e) The right to apply for a United States Mineral Patent or to prosecute existing applications for patent to any or all of the unpatented lode mining claims that comprise a portion of the Property, provided such action shall be taken in the name of the Owner and only with the Owner's consent, which consent shall not unreasonably be withheld. If the Company takes any such action or applies for any such patents, it shall pay all costs of such actions.

8. Representation of Title:

The Owner represents that to the best of its knowledge and belief:

(a) It is the sole legal and equitable owner of the entire patented group of claims, and owns an undivided possessory right, subject only to the paramount title in the United States of America, in the unpatented claims, except for those specific leases held on part of the claims and controlled by Owner and further described in Exhibit A, and those encumbrances and restrictions set out herein in this lease agreement and the instruments of conveyance.

(b) Owner represents that the rights held by it in and to the property are located in a mining district with a history of over 100 years of active or semi-active mining operation, and that an absolute clear title, vesting in Owner,



in and to each and every mining claim on the property may not exist.

(c) Since at least the year 1960 until present Owner or its predecessors in interest, have exclusively conducted mining and processing operations within the area designated by the red line indicated on the Map, Exhibit B. Owner obtained title to the property by virtue of a Warranty Deed dated December 1, 1977, conveying patented claims and a Quit Claim Deed dated November 21, 1977, conveying unpatented claims from Tech-Sym Corporation (formerly Western Gold & Uranium). Copies of Warranty and Quit Claim Deeds are attached hereto as Exhibits D and E, respectively, and incorporated herein by reference. Owner has neither encumbered nor conveyed any portion of the property since receipt of conveyance of title thereof from Tech-Sym. The Emily Jane patented claim is presently being leased by Owner from a party known as as McMullin under the provisions of a long term performance lease, a copy of which is attached as Exhibit F.

(d) The claims outside the red line on the Map consist also of property held by Owner, however, some mineral title problems and possible challenges are known to exist, although Owner considers the likelihood of such challenges to be very remote.



(e) A residential structure is located on the westerly end of the California #2 claim. This claim is presently under application for patent, and Owner reserves the right to disclaim the western-most three acres to the benefit of the residents there if necessary.

(f) Certain restrictions are included in the text of a mining lease entered into in 1977 between Tech-Sym Incorporated, a unsigned copy of which is attached hereto as Exhibit G.

(g) A limited gardening and grazing lease may exist in the name of David Glenn and Wilma C. Beal on the Silverman 1, Silverman 2 and Silverman 3 and Chloride Chief claims. This may restrict some surface disturbance on these claims. See Title Opinion Exhibit L.

(h) Owner is presently purchasing the unpatented mining claims Quail Creek #1 through Quail Creek #14 pursuant to a Lease and Option to Purchase Agreement dated June 10, 1973, by and between Frank Eager and Nick C. Scholzen, a copy of which is attached hereto as Exhibit H. Nick C. Scholzen is Vice-president of Owner and is holding the claims for and on behalf of Owner. Accordingly, Owner shall acquire the appropriate assignment of the Nick C. Scholzen interest contemporaneous with the concluding of this Agreement between Owner and Company in order to further remove any title



irregularities of record which may exist. With respect to two claims which are subject to the above referenced lease, Exhibit H, a title problem exists which may require additional time and effort on the part of Owner to resolve. Specifically, Frank Eager died, leaving Quail Creek #1 and Quail Creek #2 in the name of himself and a relative by the name of Victor Sullivan. Scholzen has demanded that the Sullivan interest be removed by the estate of Frank Eager and is withholding payment by tendering the funds into escrow. This is, nevertheless, a potential problem concerning peripheral claims which Owner will endeavor to resolve in the course of protecting Company's right to use and quiet enjoyment of the property.

(i) As to all property described in Exhibit A and by the Map, Exhibit B, Owner agrees to protect Company's right of quiet enjoyment in and to the property as it may be affected by adverse claims to title only that may exist at the date of this lease by third parties, if any, with respect to all patented mining claims (excepting Emily Jane, which is held by lease). Such protection shall be afforded Company with respect to unpatented claims and the Emily Jane patented claim, however, to a lesser degree inasmuch as such claims are traditionally more vulnerable to challenge. Accordingly, Owner agrees to use its best efforts to protect Company's use of claims. Best efforts shall constitute an expenditure of not



more than an amount equal to \$5,000.00 in 1984 on legal fees per challenged claim. In the event a claim lying outside the boundary described by the red line depicted in Exhibit B, nevertheless, is lost to a third party, Company shall have no recourse or claim of off-set, reduction in lease or purchase price or cause of action of any kind against Owner. In the event any unpatented or patented claim lying within the boundary described by the red line depicted in Exhibit B, nevertheless, is lost to a third party, Company shall have the right to reduce the minimum lease payments required under paragraph 4(b) above and the purchase price stated in paragraph 14(a) below, proportionately according to the percentage of the area measured in acreage lost to such third party. The area within said red line boundary depicted in Exhibit B shall be considered the total area upon which such proportionate reduction shall be calculated. If such a challenge shall arise, Company may, in its discretion, appoint counsel to perform service in defending title to claim(s) at its own cost. Company, however, shall in no event contact or encourage actions by or on the part of such third parties, and in the event the Company becomes aware of such claims, they shall be referred immediately to Owner in writing. In the event that a third party or a governmental agency makes an adverse claim of title against any of the property lying within the boundary



defined by the red line disputed in Exhibit B, then Company shall have the right to pay all production royalties payable for production on such depicted claims into an escrow account mutually acceptable to both Owner and Company or to the District Court in the Fifth Judicial District for the State of Utah. This right shall not extend to claims for rights of ways, easements, reservations for canals and ditches, condemnations or any other such actions by third party governmental entities, environmental and public policy and/or interest groups. Company shall also have the right to pay a proportionate share of all minimum lease payments to such escrow account or the Fifth District Court with such proportionate share to be prorated and calculated as described herein above. In the event it is determined that a third party is the owner of an undivided interest in all or a portion of the leased property hereunder, then Company shall have the right to proportionately reduce such production royalty payments on that property which is not owned entirely by Owner, Company shall have the right to reduce the minimum lease payments due Owner and the purchase price as is described in the purchase option below if such "partially owned" claim is within the red line boundary depicted in Exhibit B. For purposes of this section, the term "governmental agencies" shall include state and federal agencies or entities of any



kind, public utilities, or any public interest or regulatory bodies.

(j) Owner has provided copies of three title opinions covering the property dated October 31, 1977, Exhibit J, November 1, 1977, Exhibit T, and November 2, 1977, Exhibit J, prepared by Claron C. Spencer of Senior and Senior in Salt Lake City, Utah, and a property report by Utah Mineral Abstract Inc., Exhibit K updating title from October 31, 1977 to July 26, 1984. Owner makes no warranties of title other than that set forth in its Special Mineral Deed, and Company agrees to take property subject to the encumbrances stated in this Agreement, the title opinions and property reports provided herein, however, subject to Owner's willingness to defend use and quiet enjoyment as above set forth.

(k) That all unpatented claims leased by Company hereunder which were located by Owner are validly existing claims and were properly located and recorded according to the statutes and regulations of the Federal Government and the State of Utah.

(l) That all required assessment work has been performed on all unpatented mining claims which are the subject matter of this mining lease during the time that Owner has owned or otherwise controlled such claims.



(m) That all required affidavits of labor and recordations with the U. S. Land Management Bureau for all unpatented claims which are the subject matter of this mining lease have been timely made.

(n) That all unpatented mining claims leased hereunder have all required discovery and other claim boundary monuments in place.

(o) That except as is otherwise disclosed hereunder, there is no evidence of "overstaking" by third parties on any part of the leased property.

(p) That Owner has tendered or made available to Company, or informed Company of, all information, records, data, documents, reports, and the like concerning the leased property hereunder that has ever been in the possession of Owner.

(q) All representations and warranties described in paragraphs (a) through (o) above shall continue through the term or any extended term of this lease and the delivery of any deed or bill of sale which may be delivered to Company through its exercise of its option to purchase described in provision 14 below.

9. Owner's Access to Operation:

The Owner, its lawful agents and representatives, shall have reasonable access to the Property for photographing,



viewing, inspecting the Company's operations upon the Property, and Owner shall have the right to obtain reasonable splits or samples of all materials from drilling, workings, ores, concentrates, precipitates, electro-winnings, or any other metal bearing products containing subject minerals. Owner will receive its share of the produced metals and products at the mine site unless Owner should reasonably request an alternate delivery point, and Owner shall pay the additional costs for receiving delivery at such alternate delivery point. Owner shall hold Company harmless for all injury or damage to its agent upon the property unless caused by Company's intentional acts of gross negligence.

10. Books and Records:

(a) The Company shall keep and make available for inspection and copying by the Owner accurate records of all ores mined and minerals produced from the Property and to include any adjoining or nearby property accountings of the same. The records shall include all calculations relative to Owner's (and others) Production Royalty payments hereunder. The Company shall maintain separate records on those claims held by the leases depicted in Exhibits F and G showing production and grade and subject minerals produced on any of those claims.



(b) The Owner or its authorized representatives, shall have the right to inspect, at any reasonable time, assays and maps of workings, all drilling data including grades, mined and milled tonnage records, all records of sales including settlement sheets, developed by the Company in the course of operations hereunder as same are necessary to verify the payments to the Owner. The Company agrees to deliver to the Owner copies of all documents filed with Federal, State and local authorities that pertains to the Property promptly after they are filed.

11. Taxes:

(a) During the term of this Mining Lease and during such extension periods as may be permitted herein, the Company shall in the name of and on behalf of the Owner pay all real estate taxes levied upon the Property and personal property taxes, prorated to date hereof and to the date of termination hereof, those assessed against any improvements which exist at the time of execution of this Agreement as well as any future improvements which the Company may place on the Property or those assessed on any personal property brought on the Property. The Company shall pay all severance taxes or other taxes measured by the amount of production or sales of products from the leased property for all production from the leased property when a three percent (3%) royalty is payable to



to Owner, but Owner shall pay its proportionate share of such taxes when a greater than three percent (3%) production royalty is due Owner, and such proportionate share of such taxes shall be in proportion to the percent production royalty payable to Owner (ie: at 6% royalty rate, Owners pays 6% of severance or such other similar taxes).

(b) The Owner shall pay all income and state personal property taxes levied upon payments due or paid to it under the terms of this Agreement. Owner shall also have its share of the depletion allowances of the mine reserves.

12. Conduct of Operations:

(a) The Company shall conduct all of its operations in a good miner-like manner in accordance with generally accepted mining and processing standards, and shall be in accordance with all local, state and federal agency requirements.

(b) Company shall reasonably inform Owner on all decisions concerning methods, the extent, times, procedures, and techniques for any exploration, development, mining, leaching, milling, processing, extraction, treating, and the materials to be introduced into the property or produced therefrom by the Company.

(c) All decisions concerning the sale or other disposition of minerals as to buyers, times of sale, whether to



sell the minerals in concentrates, precipitates, cements, dorebar, or other forms, or whether to store or hold in inventory such products for a reasonable length of time without selling the same shall be made by the Company in its sole discretion as to its portion of the minerals produced.

(d) The Company shall be required to mine and to process, recover, extract, preserve and protect in its mining and processing operations, any minerals, ores, metals, concentrates, precipitates, electro-winnings, yellowcake, dorebar, bullion, or other metal bearing products resulting from mining and recovery processes, which can be mined and processed at a reasonable profit. As used herein "reasonable profit" shall mean sufficient cash flow projected from mining and processing operations of any such minerals to provide a return-on investment of more than thirty five per cent (35%) on a one hundred per cent equity basis after tax, on a discounted basis using discounted cash flow projections reasonably accepted in the minerals industry, consistently applied, and considering the effects of projected ore reserves, inflation, the future prices of such mineral commodity and the financial capability of Company to provide capital investment for mining and processing such mineral commodity.

(e) Company agrees to comply with all valid and applicable local, state and federal laws and regulations



governing its operations hereunder. Company shall pay all expenses incurred by it in its operations on the property and shall allow no liens arising from any act of the Company to remain upon the interest of Owner in and to the Leased Premises; provided, however, if Company, in good faith, disputes the validity or amount of any claim, lien or liability asserted against it with respect to the property, it shall not be required to pay or discharge the same until the amount and validity thereof have been finally determined. If authorized by applicable statute, Owner may post a notice of non-liability and the Company shall keep such notice posted during the term of this Lease. Company shall carry workman's compensation or industrial insurance coverage to the extent required by the laws of the State of Utah.

13. Reclamation Obligations:

The Company shall comply with and solely and exclusively be liable and responsible for all reclamation required by federal, state and local law, and it shall obtain all licenses and permits required thereby. It is expressly understood that mining operations conducted upon the property are subject to the Utah Mined Land Reclamation Act, Utah Code Annotated, Section 41-8-1 to 23, and that any mining plan in variance or substantial amendment to the present plan filed with the State of Utah by the Owner will require additional



filing and regulatory compliance by the Company. It is understood further that the reclamation bond requirement under the Mined Land Reclamation Act has not been filed by the Owner and that the State of Utah is petitioning for the posting of a surety bond in the sum of \$55,210.00 to cover prior surface disturbance. It shall be the obligation of the Company to post the same, no later than August 22, 1984. In the event, however, that Company chooses to terminate this lease on or prior to February 1, 1985, Owner shall, within ninety (90) days of termination, provide a substitute bond in a form acceptable to the State of Utah in place of the \$55,210.00 surety obligation posted by the Company and shall assume all reclamation obligations covered by the bond and required by the State of Utah. If Owner fails to post the substitute bond as herein required, Owner shall forfeit any and all right in and to further payment for Purchase of Equipment as set forth in Section 5 above, and Escrow Agent shall be free upon appropriate notice from Company to deliver the Bill of Sale, Exhibit "C" to Company. The Company will post all bonds in the future necessitated by its development of the property. Copies of all required bonds and financial guarantees shall be given to the Owner within forty-five (45) days after they are acquired.



14. Option to Purchase 97.5% Interest in Property:

(a) Owner hereby grants to Company an option to purchase the property for the sum of \$18,150,000.00 on or before December 15, 1989. Purchase shall be made in semi-annual installments for a period of twenty (20) years with interest accruing at the rate of 12% per annum on all unpaid principal, commencing with the date of execution of this lease agreement.

(b) Upon exercise of the option, this entire agreement shall be construed as an installment sales contract, however, no sums paid as Minimum Lease Payments or production royalties prior to the exercise of the option to purchase shall be credited toward reduction of the principal amount owing for purchase of the property.

(c) All payments deferred under the terms of this installment sales contract shall be subject to an annual inflationary adjustment. Accordingly, each semi-annual principal payment shall be adjusted by the annual increase or decrease of the Composite Consumer Price Index for the most recent prior twelve (12) month reporting period as published by the Bureau of Labor Statistics of the United States of America. If, at the time required for determination of adjustment of semiannual installment payments, the Composite Consumer Price Index is no longer published or issued, the parties shall use



such other index as is generally recognized and accepted for similar determinations of adjustments of payments.

(d) Each installment payment shall be due and payable exactly six months apart on a semi-annual basis. Any payments and the accrued interest thereon which is not made within five (5) days of the due date shall bear interest at the rate of New York prime plus two per cent (2%), whichever is greater, until paid in full. Each payment shall be applied first to accrued interest and the balance to the reduction of principal.

(e) The Company shall have the right to pre-pay any or all of the amounts due under the installment purchase terms of this agreement.

15. Conveyance of Mineral Rights:

(a) Upon the payment of all accrued interest and the first semi-annual principal payment constituting exercise of the option as more specifically described in Section 14 above, Owner shall convey, by Special Mineral Deed, a copy of which is attached hereto as Exhibit N, title to the patented mining claims property to Company subject to the reservation of a two and one-half percent (2.5%) overriding non-participating production royalty interest on gross metals recovered on and/or from the property conveyed. Although Owner retains the 2.5 percent royalty, it shall bear no obligations as to the costs



of its share of production, and Owner may take production in kind consistent with the provisions of Section 3 above.

(b) Subject to exercise of the option to purchase, Owner shall execute a Quit Claim Deed, which is attached hereto as Exhibit O, covering all unpatented mineral rights, surface structures and fixtures located upon the property and designated by the parties to be conveyed under the terms of this agreement.

(c) Subject to exercise of this option to purchase, Owner shall execute a Bill of Sale which is attached hereto as Exhibit P, covering all personal property in or upon the property to be conveyed under the terms of this agreement.

(d) Subject to exercise of the option to purchase owner shall execute an Assignment of Lease, attached hereto as Exhibit Q, covering the Emily Jane patented claim presently under lease from McMullin as more specifically described in Section 10(c).

(e) The originals of each of the foregoing conveyances referred to in paragraphs 17 (a) (b) (c) and (d) shall be delivered at closing to the Escrow Agent to be handled and disposed of in accordance with the Escrow Instructions.

(See Escrow Instructions, Appendix I.)



16. Owner's Security Interest:

(a) Upon exercise of the option to purchase, the Owner's interest in securing payment of indebtedness owed to it and performance of all obligations under the terms of this agreement shall be protected by a non-subordinate Utah Deed of Trust and Security Agreement, a copy of which is attached hereto as Exhibit L, covering all real, mineral and personal property interests conveyed by Owner to Company.

(b) The parties shall execute the Deed of Trust and Security Agreement at closing and deliver the same to Escrow Agent to be handled and disposed of in accordance with the Escrow Instructions. (See Escrow Instructions, Appendix I).

(c) The Utah Deed of Trust shall contain partial release provisions allowing for release of the subject property of the encumbrance of the Deed of Trust upon reduction of the principal sum owed by Company to Owner as more specifically set forth in the Deed of Trust.

(d) The parties acknowledge that the security device used herein is a standard form Utah Deed of Trust modified to apply to mining property. In the event of any conflicts between the Utah Deed of Trust with Assignment of Rents and Security Agreement, and this Mining Lease and Option to Purchase, the terms of this Mining Lease and Option to Purchase shall govern.



General Terms and Conditions Governing Both Lease  
and Purchase Agreements

17. No Implied Covenants:

The Owner and the Company intend and agree that no implied covenants or duties (including, but not limited to, implied covenants in relation to exploration or mining, or the payment of rentals, royalties or any other monies provided for herein) of any kind whatsoever shall affect any of their respective rights or obligations hereunder, and that the only covenants or duties which affect such rights and obligations shall be those expressly set forth and provided for in the Mining Lease.

18. Principles Governing Taking Mineral Products in Kind.

The parties agree that Owner may receive payment in kind of mineral products produced by Company from the leased property, including, but not limited to, direct shipping ore, concentrates, precipitates, dore and refined metal under certain terms of this agreement. As a guideline only, the taking of product in kind shall be governed as follows:

A. Precious Metals:

(a) If one is reduced to sulfide metal state, the Owner may take product in concentrates of sufficient grade, quality and content to be immediately marketable without



further processing and absent contaminants or excessive combination of metals.

(b) If produced in form of anode mud or anode slime, Owner may take product of sufficient grade quality and content to be immediately marketable in the form produced.

(c) If produced in form of high grade precipitate or cement, product may be in form of 70%+ contained precious metals.

(d) Dore bar.

(e) .999 electrolytically refined pure bar

(f) Product described in paragraph (a) may be taken at mine site only. Products described in paragraphs (b) (c) and (d) may be taken at mine site or at refiner's location within 500 miles of the mine. Product described in (e) above may be delivered to owner at mine site, or refiner's place of business anywhere within the United States or Canada.

B. Fissionable Product:

Fissionable product may be reduced to a form of Nuexco Uranium Concentrate or yellowcake grade, or concentrate sufficient for immediate shipping and marketing in a grade and value per ton consistent with the compensation terms of this agreement. Material shall be delivered to Owner at the mine site.



C. Non-Metallic Minerals:

(a) Owner may take product in any of the following forms: unground bulk, ground bulk, ground and bagged, common grade or chemical or industrial grade of sufficient grade and quality to market in the form delivered to owner without further processing.

(b) Products shall be deliverable to Owner at mine site.

D. Base Metals:

(a) Base metals may be taken by Owner in concentrate form as to sulfides and of sufficient value in terms of grade and quality to be immediately marketable. For purposes of illustration, copper may be produced and taken in kind in any of the following forms: (1) 70% + copper cement, anode copper, 80%+, fire refined tough pitch ingot 95%+, cathode copper electrolytically refined 99%+ or wire bar .999.

(b) All other base metals shall follow the same format as that applied to copper in paragraph (a) above providing that each product is delivered to Owner in a marketable selling grade.

(c) Base metals shall be deliverable to Owner at mine site or at refiner's place of business within the United States or Canada, as agreed by Owner, Company and such third party refiner.



E. Miscellaneous Metals:

(a) Other metals not covered herein may be delivered in appropriate concentrates or common grade form such as powder, shot, alloy ingots or refined bars at the mine site or at refiner's place of business within 500 miles of the mine.

F. Risk of Loss:

Notwithstanding anything above to the contrary, until actual delivery to Owner, all risk of loss shall be borne by Company. Subject to paragraph G below, Company shall be responsible for storage, security, insurance and control of all product until delivered by signed invoice to Owner or its agent.

G. Costs:

All costs except for third party charges set forth in Section 3, paragraph (b), incurred prior to delivery of product to Owner shall be borne by Company. In the event Owner fails to pick up delivery tendered by Company within five (5) days written notice of tender, Company may deduct reasonable costs of storage, insurance and security from amounts due owner.

H. Owner Cannot Dictate:

Nothing contained herein to the contrary shall require Company to produce any product from materials and ores mined from the leased property in a form or in a manner mandated by Owner.



19. Assignment:

The Company shall not have the right to assign this Mining Lease and Option to Purchase at any time during the term hereof or during any lease extensions without the approval of the Owner, which approval shall not be unreasonably withheld.. Any conveyance by the Owner of interests in the Property or assignment of rights under this Mining Lease shall not be binding upon the Company until it has been furnished with the original or certified copy of the instrument effecting such conveyance or assignment. In the event Owner shall assign any rights hereunder to more than one party, Owner, at the address provided in Section 28 herein shall serve as the depository for all payments. Owner shall be responsible for payment and conveyance of notices to its own assigns.

20. Indemnification:

The Company agrees to indemnify and hold harmless the Owner from all injury, damages, liens, demands, claims, and liabilities and costs of every description, including acts and omissions of the Company, resulting from the use and possession of the Property by the Company.

21. Litigation:

If either party commences litigation based on this Mining Lease and Option to Purchase or grievances or defaults hereunder, the prevailing party shall be entitled to recover a



reasonable attorney's fee to be awarded by a court of competent jurisdiction, together with all costs of litigation. In determining what is a reasonable sum for attorneys' fees and costs, the actual amount of attorneys' fees and costs which the prevailing party is obligated to pay his attorney or attorneys or others shall be presumed to be reasonable, which presumption shall be rebuttable. In the event neither party wholly prevails, the court (or arbitrator) shall award to the party whose position is determined to be comparatively correct, an equitable portion of the attorneys' fees and litigation expenses to which the party would otherwise have been entitled had the party wholly prevailed. Evidence as to fees and litigation expenses shall be presented only after determination of the principle controversy. The parties agree that jurisdiction for purposes of litigation of this Agreement shall be in the Federal District Court for Utah or Third District Court for Salt Lake County, Utah, in the event the Federal District Court does not have jurisdiction.

22. Arbitration:

In the event of any controversy, claim or dispute arising out of, or relating to, this Mining Lease and Option to Purchase or the method and manner of performance thereof or the breach thereof, and the parties mutually agree to arbitration in lieu of judicial litigation, the controversy, claim or



dispute shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction. Attorney fees and costs shall be awarded by the arbitrator as set forth in paragraph 25 above.

23. Insurance:

The Company shall acquire, within thirty (30) days, a comprehensive liability insurance policy against liability to third parties on the Property naming the Owner as an additional insured. Such policy shall provide for not less than \$500,000 per person and \$500,000 per occurrence, with a \$10,000,000 umbrella policy. A certificate of such policy shall be delivered to Owner within forty-five (45) days from the date hereof. The amount of insurance coverage shall be subject to review and modification every four years and shall be increased by the Company without demand by Owner to reflect the same degree of insurance coverage and protection in the year of such review and the above and foregoing amounts reflect in this year of initial agreement.

24. Water Rights:

At the present time some water rights to the Property do exist. They are presently held in the name of West-Tec, although the rights were conveyed by way of the August 31, 1977



purchase agreement between Western Equities and 5M. The water rights are described in the Quit Claim Deed, Attachment #3 to Escrow Instructions, 5M will affect appropriate transfer on the records of the Utah State Engineers office no later than six months from the date of this agreement. Right and leave are freely given to the Company to purchase or rent additional water rights if necessary or to develop and make application to the Utah State Engineer for other water which may be developable within the Property boundaries. The Company is free to obtain certification of such water rights if they do become available. The Company shall make all water right applications developable within the property boundaries in the name of the Owner, and Owner shall cooperate by executing such documents as may be reasonably necessary to effect acquisition of such rights. All such efforts and applications shall be pursued at the sole cost and expense of the Company. In the event of termination of this Agreement, all such water rights which have been developed within the property boundaries and certificates shall be assigned or deeded to the Owner and the Company shall deliver to the Owner all relevant documentation pertaining thereto. Upon such termination, Owner shall have the right to purchase any other water rights held by Company within Washington County, Utah, at Company's cost of acquisition.



25. Laws and Regulations:

The Company agrees to comply with all federal, state, and local laws, rules and regulations of any kind and character, and obtain all required applications, licenses, permits and approvals relating to the Property or operations thereon.

26. Observance of Title:

The Company agrees and stipulates that it will not contest the Owner's title to the Property or make any claim or representation of adverse title thereto.

27. Notices and Information:

Information concerning this Mining Lease may be obtained from the Company at the below listed address. Any notice, election, or other correspondence required or permitted hereunder shall be deemed to have been properly given when made in writing and effective when delivered personally or by United States certified or registered mail to the party to whom directed, or when sent by telegraph, with all necessary postage or charges fully prepaid, return receipt requested (or in the case of a telegram, confirmation of delivery) and addressed to the party to whom directed at its below specified address:

If to the Company:

Kerley Mining Chemicals, Inc.  
Santo Tomas Rt. Box 73  
Sahuarita, AZ 85629



If to the Owner:

5M, INCORPORATED  
P. O. Box 752  
Hurricane, Utah 84737

With copies to:

Jerry Glazier  
P. O. Box 653  
Hurricane, Utah 84737

With copies to:

Jones, Waldo, Holbrook &  
McDonough  
c/o Timothy B. Anderson  
One South Main - Suite 300  
St. George, Utah 84770

Either party hereto may change its address for the purpose of receiving notices or communications hereunder by furnishing notice thereof to the other party in compliance with this Section.

28. Payments:

All payments that are not of an in-kind nature shall be made to:

5M Incorporated  
P. O. Box 752  
Hurricane, Utah 84737

(Or at such other address or location as Owner shall designate in writing.)

29. Time is of the Essence:

Time is of the essence in the performance of this Mining Lease and Option to Purchase particularly, but not by way of limitation, as to all payments required to be made to the Owner by the Company.



30. Construction:

This Mining Lease and Option to Purchase and the rights of the parties hereunder shall be governed by the laws of the United States and the State of Utah. If this Mining Lease and Option to Purchase or any provision hereof is found to be inconsistent with or contrary to any such law or regulation thereunder, this Mining Lease and Option to Purchase shall be regarded as being modified to the extent required to comply with such law or regulation and as so modified shall continue in full force and effect. The headings used herein are for convenience of reference only and shall not be taken or construed to define or limit any of the terms or provisions hereof. Unless otherwise provided or unless the context shall otherwise require, words importing the singular number shall include the plural number, words importing the masculine gender shall include the feminine gender and vice versa.

31. Lease Obligations Apply to Installment Purchase.

During the period of installment purchase, all obligations, terms and conditions set forth in Sections 7, 8, 9, 10, 11, 12, and 13 shall apply to the installment sale and be a part thereof as if fully set forth in the part of this Agreement entitled "General Terms and Conditions Governing both Lease and Purchase Agreement."



32. Subsequent Changes:

It is understood and agreed that no change, alternation or modification of this Mining Lease and Option to Purchase of any of the covenants and agreements herein contained shall be effective unless made in writing, dated subsequent hereto, and signed by all parties.

33. Inurement:

This Mining Lease and Option to Purchase shall be binding upon all of the heirs, executors, legal representations, administrators, successors in interest and assigns of the parties hereto.

34. Representations of Owner:

In addition to the covenants and representations hereinabove stated, Owner represents to Company as follows:

(a) Owner is a corporation duly organized and existing under the laws of the State of Utah with full power to enter into this Agreement and execute all documents pertaining hereto.

(b) Owner has the corporate power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by its board of directors and no other corporate proceedings on the part of Owner are necessary to authorize



this Agreement and the transactions contemplated hereby (including, but not by way of limitation, any shareholder approval under Section 16-10-74, Utah Code Annotated, 1953). Neither the execution and delivery of this Agreement, nor compliance by Owner with the terms and provisions hereof, will conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Incorporation or Bylaws of Owner, or any statute, judgment, order, injunction, decree, regulation or ruling of any court or governmental authority to which Owner is subject. No authorization, consent or approval of any public body of authority is necessary for the consummation by Owner of the transactions contemplated by this Agreement.

(c) Owner has provided to Company opportunity to inspect the property leased hereunder, including on site inspection, opportunity to run preliminary mineral evaluation and deposit testing as well as inspect mineral, water, real estate and personal property rights pertaining thereto. Owner has no knowledge of any encumbrances which have not already been disclosed to the Company.

35. Representations of Company:

(a) Company is a corporation duly organized and existing under the laws of the State of Arizona, with its headquarters in Tucson, Arizona.



(b) Company will qualify or has qualified to do business in the State of Utah as a consequence of entering into this Agreement or by virtue of other activity in the State of Utah.

(c) Company has the corporate power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by its board of directors and no other corporate proceedings on the part of Company are necessary to authorize this Agreement and the transactions contemplated hereby. Neither the execution and delivery of this Agreement, nor compliance by Company with the terms and provisions hereof, will conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Incorporation or Bylaws of Company, or any statute, judgment, order, injunction, decree, regulation or ruling of any court or governmental authority to which Company is subject. No authorization, consent or approval of any public body or authority is necessary for the consummation by Company of the transactions contemplated by this Agreement.

(d) Company agrees to conduct the mining operations in accordance with all applicable safety regulations, together with all other city, county, state and



federal laws and regulations which may be applicable to its business.

36. Force Majeure:

Except for the payment of minimum lease payments or production royalties due Owner hereunder, and payment of taxes, compliant with all bonding and reclamation obligations and payments of minimum property maintenance costs such as utility bills, liability insurance and performance of assessment work by Company, either party shall be excused from performance under this agreement because of forces and conditions reasonably beyond its control, except that such performance shall only be delayed for the length of time caused by such force majeure. The party desiring to avail itself of this provision must immediately notify the other party of the details of the event giving rise to its reasonable inability to perform and an estimate of the length of time that such performance will be so delayed. Nothing contained herein shall require either party to settle any labor dispute with its employees.

37. Memorandum of Mining Lease.

Neither party shall record a copy of this lease agreement in the records of Washington County, Utah or any other public records, but the parties shall record a "Memorandum of Lease" in the form attached hereto as Exhibit N.



38. Conditions Precedent to Agreement:

All obligations of the parties under this Agreement, unless waived by the other party, are subject to the fulfillment at or prior to the signature date of each of the following conditions:

(a) the representations and warranties by or on behalf of the parties hereto contained in this Agreement or in any certificate or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, shall be true in all material respects at and as of the time of the signature date as though such representations and warranties were made at and as of such time;

(b) each of the parties hereto shall have performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by them prior to or at the signature date.

39. Confidentiality-News Releases:

The parties hereto acknowledge their desire that all price, compensation and consideration terms of this agreement, and all factual and technical data and information concerning the leased property or any operations thereon, be held in strict confidence. The parties shall make no official press release or other publicity as to such matters, including the consideration being transferred to Owner pursuant to this



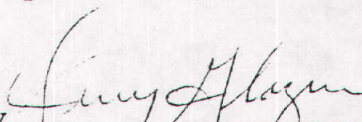
Agreement. The parties shall not be restricted from providing such information to their stockholders and others in the course of routine corporate business.

40. Entire Agreement:

This Mining Lease of even date herewith, Appendix I and II, and Exhibits A through N, contain the entire Agreement, express or implied, of the parties hereto, and the parties agree that no promises or representations of any nature which shall be binding upon them have been made by either of them to the other which are not set forth in these documents.

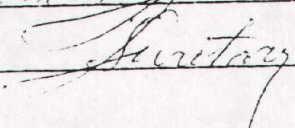
DATED the day and year first above written.

5M, INCORPORATED, a Utah  
corporation,

By   
Jerry Glazier, President

Attest:

By 

Its 

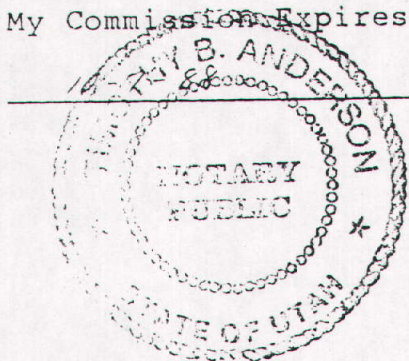


STATE OF UTAH )  
COUNTY OF \_\_\_\_\_ ) : ss

On the 2<sup>nd</sup> day of August, 1984, A.D., personally appeared before me JERRY GLAZIER and WILLIAM T. SORENSEN, who being by me duly sworn did say, each for himself, that he, the said JERRY GLAZIER, is the President of 5M, INC., and he, the said WILLIAM T. SORENSEN is the secretary of 5M, INC., and that the within and foregoing instrument was signed in behalf of said Corporation by authority of a Resolution of its Board of Directors and said JERRY GLAZIER and WILLIAM T. SORENSEN each duly acknowledge to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Timothy B. Anderson  
Notary Public  
Residing at: St. George, Utah

My Commission Expires:



KERLEY MINING CHEMICALS INC.

By: Ronald E. Ashcroft  
Ronald E. Ashcroft, President



STATE OF UTAH )  
COUNTY OF \_\_\_\_\_ ) : ss

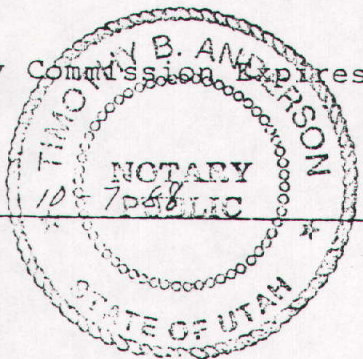
On the 23<sup>rd</sup> day of August, 1984, A.D.,  
personally appeared before me RONALD E. ASHCROFT  
and \_\_\_\_\_, who being by me duly sworn did say,  
each for himself, that he, the said RONALD E. ASHCROFT is the  
President of KERLEY MINING CHEMICALS INC., and that the within  
and foregoing instrument was signed in behalf of said  
Corporation by authority of a resolution of its Board of  
Directors to sign this Agreement.

Timothy B. Anderson

Notary Public

Residing at: St George, Utah

My Commission Expires:



0297A

TBA

*note: this page and the foregoing  
was left unnotarized at the SLC  
closing on August 23, 1984. With permission  
of Mr. Ascheft and Mr. Glazier I am  
notarizing their signatures which I saw  
them make on August 23, 1984.*

*- 23 Sept. 1984 Timothy B. Anderson*



EXHIBIT "B"



AGREEMENT  
AND  
FIRST AMENDMENT OF CONTRACT

This Agreement and Amendment of contract is entered into this 27<sup>th</sup> day of February, by and between 5M INCORPORATED, a Utah corporation herein referred to as "Owner", which has its office and place of business at 279 West State Street, Hurricane, Utah and KERLEY MINING CHEMICALS INC., an Arizona corporation herein referred to as the "Company" which has an office and place of business at Santo Tomas Rt Box 73, Sahuarita, Arizona 85629.

The contract which this agreement shall amend is entitled "Mining Lease and Option to Purchase", dated August 23, 1984, a copy of the cover page of said agreement, together with the table of contents, exhibit list and signature pages are attached hereto as Exhibit A to identify the contract with specificity.

The parties hereto, for good and valuable consideration, the sufficiency of which is herewith acknowledged, hereby agree as follows:

1. REPAYMENT OF ZIONS BANK LOAN: Owner has borrowed from Zions First National Bank, Hurricane, Utah branch, the sum of \$75,000.00, the same which is due on March 14, 1985. Company



agrees to pay off and satisfy the balance due Zions First National Bank on or before February 11, 1985. Repayment of the loan shall constitute payment in full and complete the obligation for purchase of equipment set forth in Section 5 on Page 16 of the August 23, 1984 Agreement.

2. ACQUISITION OF NEW LOANS: The Company shall assist Owner in acquiring a new loan in the sum of \$75,000.00 by providing its guarantee of collection of any judgment which may be entered against Owner as a result of Owner's failure to repay the loan. The parties shall endeavor to acquire a 12 month term for said loan. The application for loan shall be made in writing no later than February 27, 1985. In the event the loan is not approved on or prior to February 28, 1985, this entire Agreement shall be null and void and without effect.

In the event Owner, for any reason, fails to pay such loan timely and upon date of maturity, the Company is required to make payment thereon as party guaranteeing collection, Owner shall owe to Company the amounts paid on said note to Company, together with interest, at the rate of 15% per annum, until paid in full. Furthermore, Owner hereby grants to Company a two per cent (2%) overriding royalty interest in and to production from the mineral properties which are subject of the August 23, 1984 Agreement or a right to payment from first proceeds from any sale, lease or income producing activity whatsoever on the subject property to secure the payment and satisfy any amounts due hereunder from Owner to Company. At such time as the amount



due is paid by Owner to Company, the royalty interest granted herein shall terminate. This provision to secure payment shall be applicable only in the event Company terminates the August 23, 1984 Agreement as amended prior to payment of all amounts due on the promissory note referenced above.

In the event Owner, for any reason, fails to make payment on the promissory note to Zions First National Bank, and the August 23, 1984 Agreement, as amended, is still in effect, Company may pay the same and deduct such payment from the amount owing to Owner in its annual payment next following.

3. REIMBURSEMENT OF TAXES AND INSURANCE PREMIUMS: In the event that Company, for any reason, terminates the August 23, 1984 Agreement as amended during periods for which Owner is still paying taxes and/or liability insurance premiums which the August 23, 1984 agreement as amended requires Company to pay, Company shall reimburse to Owner such amounts, if any, which it should have paid on a pro rata basis, based on the amount of time that Company has held a leasehold interest in the mineral properties.

4. RECLAMATION BOND-TERMINATION OF COMPANY: In the event Company, for any reason terminates the August 23, 1984 Agreement as amended, between the date hereof and June 15, 1985, Owner shall, within twelve months of the date thereof, replace and substitute the bond presently posted with the State of Utah, Department of Oil, Gas and Mining. In the event Owner fails to replace the bond within twelve months, Company shall be entitled to reimbursement thereof under the terms of the security provi-



sion of Paragraph 2 above. This provision modifies the provisions of Paragraph 13 entitled "Reclamation Obligations" of the August 23, 1984 Agreement, and any other part inconsistent with this agreement.

5. MODIFICATION OF PAYMENT DATES: Paragraph 4(b) under the sectional heading, "Minimum Lease Payments" shall be amended as follows: Payment due February 1, 1984 of \$150,000.00 shall be deferred and paid on or before June 15, 1985. The May 15, 1985 payment of \$500,000.00 shall be deferred until June 15, 1985.

6. DRILL DATA: Company shall, within 30 days of the date hereof, provide complete duplicates of all drilling data reports, any and all information on grades and tonnage, metallurgical studies and data as to ore reserves blocked out, inferred and deemed profitable.

The above and foregoing constitute a subsequent change to the August 23, 1984 agreement as authorized in Section 32 thereof entitled "Subsequent Changes" and is limited to the changes and modifications set forth therein. Such subsequent changes shall control and supercede any language inconsistent therewith in the text of the August 23, 1984 Agreement, whether or not specifically referenced herein.

7. RIGHT OF FIRST REFUSAL FOLLOWING TERMINATION: If Company shall fail to make the payment of the total of \$650,000.00 on or before June 15, 1985, and as a result of such default the August 23, 1984 Agreement shall be terminated by Owner, then Company shall, nevertheless, retain a right of first



refusal for a period of one year following the date of termination to match any bona fide good faith offer for sale, lease or other income-producing activity to or from a third party which shall be made on property covered by the August 23, 1984 agreement. Company shall have a period of fifteen (15) days to exercise its right of first refusal on any such offer made after notice, as required herein, on or before November 15, 1985. Thereafter, the exercise period shall be thirty (30) days.

DATED this 27<sup>th</sup> day of February, 1985.

5M INCORPORATED, a Utah corporation

By Jerry Glazier  
Jerry Glazier, President

Attest:

By William T. Sorensen  
Secretary

STATE OF UTAH )

:ss:

COUNTY OF WASHINGTON )

On the 27<sup>th</sup> day of February, 1985, personally appeared before me JERRY GLAZIER and WILLIAM T. SORENSEN, who being by me duly sworn, did say each for himself, that he, the said JERRY GLAZIER, is the President of 5M Inc., and that said WILLIAM T. SORENSEN is the Secretary of 5M, Inc., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said JERRY GLAZIER and WILLIAM T. SORENSEN each duly acknowledge to me



that said corporation executed the same and that the seal affixed is the seal of said corporation.



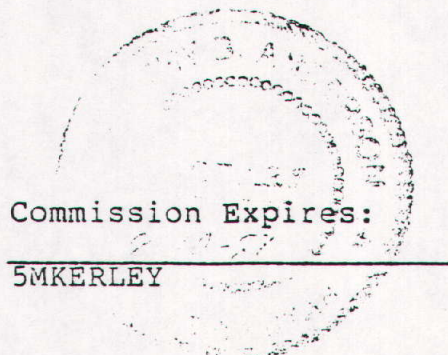
Frederick B. Ashcroft  
Notary Public  
Residing: St George, Utah

KERLEY MINING CHEMICALS INC.

By Ronald E. Ashcroft  
Ronald E. Ashcroft, <sup>Vice</sup> President Ret

STATE OF Utah )  
County of Washington ) :ss:

On the 27<sup>th</sup> day of February, personally appeared before me RONALD E. ASHCROFT, who being by me first duly sworn did say that he, the said RONALD E. ASHCROFT, is the <sup>Vice</sup> President of Kerley Mining Chemicals Inc. and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors to sign this Agreement. Ret



Frederick B. Ashcroft  
Notary Public  
Residing: St George, Utah



EXHIBIT "A" TO PRELIMINARY OPTION AGREEMENT

MINING LEASE

AND

OPTION TO PURCHASE

between

SM, INCORPORATED

and

~~CHEMICALS~~  
KERLEY MINING MINERALS, INC.

Re: Silver Reef Mine,

Washington County, Utah

Date: August - 1984



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Appendix I

Escrow Instructions

Appendix II

List of Exhibits



APPENDIX II

EXHIBIT LIST

EXHIBIT A	Description of all properties subject matter of the Mining Lease and Option to Purchase
EXHIBIT B	Map of all properties subject to lease and/or sale
EXHIBIT C	Bill of Sale - Installment purchase at Minesite \$102,000.00
EXHIBIT D	Copy of Warranty DEed - Tech Sym to 5M, 1977
EXHIBIT E	Copy of Quit Calim Deed - Tech Sym to 5M, 1977
EXHIBIT F	Emily Jane Lease - McMullin to 5M Inc.
EXHIBIT G	Mining Lease Tech - Sym to 5M - 1977
EXHIBIT H	Lease and Option to Purchase Agreement, Eager-Scholzen, June 10, 1977
EXHIBIT I	Title Opinion - Patented Claims - October 31, 1977
EXHIBIT J	Title Opinion - Unpatented Claims - November 1, 1977
EXHIBIT K	Title Opinion - Fee Lands - November 2, 1977
EXHIBIT L	Property Report - July 26, 1984
EXHIBIT M	Utah Deed of Trust with Assignment of Rents and Security Agreement (with attachments 1-6 of Partial Reconveyances)
EXHIBIT N	Memorandum of Lease, 5M - Kerley



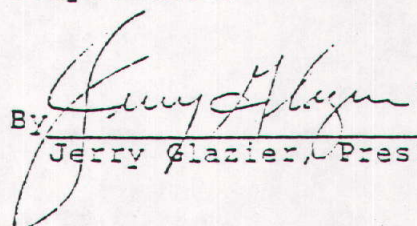
Agreement. The parties shall not be restricted from providing such information to their stockholders and others in the course of routine corporate business.

40. Entire Agreement:

This Mining Lease of even date herewith, Appendix I and II, and Exhibits A through N, contain the entire Agreement, express or implied, of the parties hereto, and the parties agree that no promises or representations of any nature which shall be binding upon them have been made by either of them to the other which are not set forth in these documents.

DATED the day and year first above written.

SM, INCORPORATED, a Utah  
corporation,

By   
Jerry Glazier, President

Attest:

By 

Its 

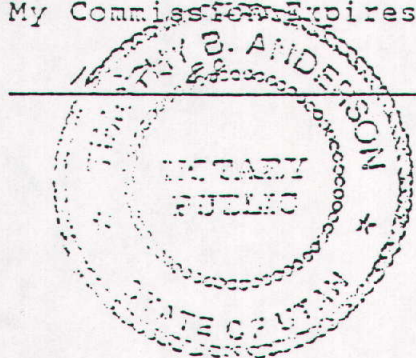


STATE OF UTAH )  
COUNTY OF Washington ) ss

On the 2<sup>nd</sup> day of August, 1984, A.D., personally appeared before me JERRY GLAZIER and WILLIAM T. SORENSEN, who being by me duly sworn did say, each for himself, that he, the said JERRY GLAZIER, is the President of 5M, INC., and he, the said WILLIAM T. SORENSEN is the secretary of 5M, INC., and that the within and foregoing instrument was signed in behalf of said Corporation by authority of a Resolution of its Board of Directors and said JERRY GLAZIER and WILLIAM T. SORENSEN each duly acknowledge to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Timothy B. Anderson  
Notary Public  
Residing at: 51. 6000 N. 1000 E.

My Commission Expires:



KERLEY MINING CHEMICALS INC.

By: Ronald E. Ashcroft  
Ronald E. Ashcroft, President

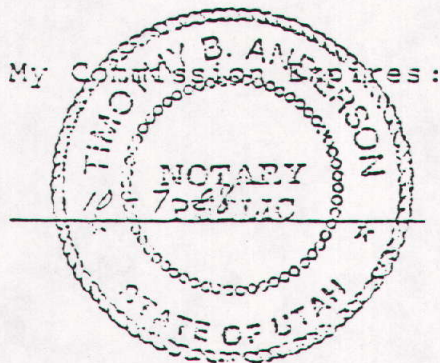


STATE OF UTAH )  
COUNTY OF Washington ) ss

On the 23<sup>rd</sup> day of August, 1984, A.D.,  
personally appeared before me RONALD E. ASHCROFT  
and                                 , who being by me duly sworn did say,  
each for himself, that he, the said RONALD E. ASHCROFT is the  
President of KERLEY MINING CHEMICALS INC., and that the within  
and foregoing instrument was signed in behalf of said  
Corporation by authority of a resolution of its Board of  
Directors to sign this Agreement.

Timothy B. Anderson  
Notary Public

Residing at: St George, Utah



0297A

TBA

*note: this page and the foregoing  
was left unnotarized at the SLC  
closing on August 23, 1984. With permission  
of Mr. Ascheff and Mr. Glazier I am  
notarizing their signatures which I saw  
them make on August 23, 1984.*

*- 23 Sept. 1984 Timothy B. Anderson*



EXHIBIT "C"



AGREEMENT  
AND  
SECOND AMENDMENT OF CONTRACT

THIS AGREEMENT AND SECOND AMENDMENT OF CONTRACT is entered into this 11<sup>th</sup> day of June, 1985, by and between 5M INCORPORATED, a Utah corporation, hereinafter referred to as "Owner", which has its office and principal place of business at 279 West State Street, Hurricane, Utah 84737, and KERLEY MINING CHEMICALS INC., an Arizona corporation, referred to herein as the "Company", which has its office and place of business in Santo Tomas, Rt Box 73, Sahuarita, Arizona 85629.

The contract which this agreement shall amend is entitled "AGREEMENT AND FIRST AMENDMENT OF CONTRACT", dated February 27, 1985, (referred to herein as "February 27, 1985 Agreement" as well as the original agreement entitled "MINING LEASE AND OPTION TO PURCHASE", dated August 23, 1984, (referred to herein as "August 23, 1984 Agreement")) between the parties, copies of which are attached hereto as Exhibit "A", which also includes the table of contents, exhibit list and signature pages of the original August 23, 1984 agreement between the parties. This amendment agreement shall also apply to all escrow instructions originally prepared in connection with the August 23, 1984 agreement.



The parties hereto, for good and valuable consideration, the sufficiency of which is hereto acknowledged, hereby agree as follows:

1. Modification of Minimum Lease Payment Schedule:

This agreement shall modify Section 4 of the August 23, 1984 agreement as follows:

Paragraph 4 (b) shall read:

All payment obligations for minimum lease payments due from Company to Owner under the August 23, 1984 agreement prior to the date hereof, and including the June 15, 1985 payment set forth in the Amendment of Contract dated February 27, 1985, shall be considered satisfied, released and/or waived.

The payment schedule set forth in Section 4 (b) of the August 23, 1984 agreement shall be modified to read as follows:

<u>Date of Payment</u>	<u>Year</u>	<u>Amount of Payment</u>
------------------------	-------------	--------------------------

Date of Execution of this Agreement	1985	\$35,000.00
-------------------------------------	------	-------------

August 31	1985	\$75,000.00 plus interest
-----------	------	---------------------------

Note: To pay off principal of \$75,000.00 plus accrued interest on Zions Bank loan acquired pursuant to Section 2 entitled "Acquisition of New Loans" in the February 27, 1985 Amendment of Contract

October 21	1985	\$200,000.00 Loan Acquisition
------------	------	-------------------------------

Note: The Company shall assist Owner in acquiring the sum of \$200,000 (1) by way of a loan from a bank or other qualified lender by providing its guarantee of collection of any judgement which may be entered against Owner as a result of Owner's failure to repay the loan, (2) or by payment of equivalent cash amount, (3) or by any combination of loan and cash amount. The parties shall endeavor to acquire a 12 month term for said loan. The application for loan shall be made in writing no later than October 14, 1985. In the event said cash sums, and/or loan are not funded



by November 1, 1985, this entire Agreement, together with all prior written agreements, shall terminate without further notice, and all parties hereto expressly waive the requirements of notice, either by agreement or operation of law. *fit*

In the event Owner, for any reason, fails to pay such loan timely and upon date of maturity, the Company is required to make payment thereon as party guaranteeing collection, Owner shall owe to Company the amounts paid on said note to Company, together with interest, at the rate of 15% per annum, until paid in full. Furthermore, Owner hereby grants to Company a two per cent (2%) overriding royalty interest in and to production from the mineral properties which are subject of the August 23, 1984 Agreement or a right to payment from first proceeds from any sale, lease or income producing activity whatsoever on the subject property to secure the payment and satisfy any amounts due hereunder from Owner to Company. At such time as the amount due is paid by Owner to Company, the royalty interest granted herein shall terminate. This provision to secure payment shall not be applicable in the event Company terminates the Agreement as amended prior to payment of all amounts due on the bank promissory note referenced above to be acquired on or about October 21, 1985. *by*

In the event Owner, for any reason, fails to make payment on the promissory note to Zions First National Bank, and the August 23, 1984 Agreement, as amended, is still in effect, Company may pay the same and deduct such payment from the amount owing Owner in its annual payment next following. *or any other qualified lender including the Company*

May 1 1986 \$250,000.00

Note: First proceeds shall be applied to any existing joint indebtedness or indebtedness of owner guaranteed by company as may exist on bank loan of October 21, 1985 as set forth above.

Sept. 1 1986 \$250,000.00. *LOAN ACQUISITION*

Note: Owner again provides assistance in acquiring loan on same terms as set forth in October 21, 1985 loan arrangement outline above. *fit*

May 15 1987 \$250,000.00 minimum payment

Note: To be applied first to any existing joint indebtedness as may exist on prior bank loans of October 21, 1985 and September 1, 1985; with all future minimum payments to the following scale:

Minimum Lease Payment

Royalty

Market Condition

\$250,000.00

\$6.00/oz Ag or under



\$375,000.00

7.00/oz Ag

\$500,000.00

8.00/oz Ag

The applicable market price shall be determined by computing the average monthly market price for silver, for the twelve month period, ending in the month immediately preceeding the month in which payment is due. Such price average shall be determined as quoted by Metals Week publication, or such other authoritative pricing guide regularly used in the industry, in the event Metals Week ceases publication, or as the parties may agree.

2. Production Royalty: Section 3 entitled "Production Royalty Payments" in the August 23, 1984 agreement shall be modified in paragraph (b) thereof as follows:

The production royalty shall be determined on a proration basis, according to the following scale:

<u>Royalty</u>	<u>Price of Silver</u>
3%	\$6.00/oz Ag or under
4%	\$8.00/oz Ag
6%*	\$10.00/oz Ag or over

\*Six per cent shall serve as the maximum production royalty, regardless of increases over \$10.00/oz Ag. ~~No deductions or charges are to be made against Owner for exploration drilling, mining, milling, freighting, processing, smelting, refining, selling or any other costs or activities of the com-~~

pany. With the exception of the above method for defining royalty percentages, royalty calculations shall be made on the same basis as in the Mining Lease and Option to Purchase Agreement dated August 23, 1984



3. Taxes: Section II entitled "Taxes" shall be modified in the last sentence thereof by relieving Owner of any obligation to pay severance taxes. It is agreed that the paragraph shall end with the words "to owner," at the top of page 35, and that the remainder of the phrase, as it continues with the words "but Owner shall pay . . ." shall be deleted.

4. Obligation to Prosecute Mining: Company shall be required to perform further exploratory and mill installation work as follows:

A. No later than May 15, 1986, Company shall have completed an exploratory drilling program, pursuant to normal standards in the industry as follows: Across Techumesh Hill, the Leeds Mine to the Barbie and Walker Claims; upon the McNally and Newton mining areas. Such drilling shall consist of not less than 150 holes, or expenditure of \$300,000.00 on actual drilling costs, whichever first occurs.

B. On or prior to May 15, 1987, Company shall have installed the equipment and facility necessary to operate a 3,000 ton per day mine and ore processing program on the property.

Failure of Company to perform as set forth in A and B above shall not work as immediate forfeiture of the lease, but shall be subject to the normal notice and termination provisions as set forth in the August 23, 1984 agreement between the parties. *The parties acknowledge the continuing application of section 36 entitled "Force Majeur" as set forth in the August 23, 1984 Agreement interpreted in terms of this paragraph.*



Owner shall be authorized to go onto the property and take possession of the 12,800 gallon water tank located next to the equipment shed. By this agreement, one of the five 12,800 gallon water tanks described as item 5 on the Bill of Sale prepared pursuant to the August 23, 1985 agreement shall be deleted from said Bill of Sale.

Neither the reclamation bond assumption as set forth in Section 13 of the August 23, 1984 agreement, nor the payments pursuant to the equipment sale, Section 5, nor the delivery of the 12,800 gallon water tank nor insurance payments shall constitute royalty advances under this agreement. All other payments hereunder do constitute royalty advances as set forth in Section 4 of the August 23, 1984 agreement.

5. RECLAMATION BOND: In the event this agreement is terminated by Owner or Company prior to the commencement of construction of the ore processing facilities, Owner shall replace and substitute the reclamation bond referred to in Section 13 of the August 23, 1984 agreement within twelve (12) months following the date of termination. In the event Owner fails to replace the bond, the provisions of Section 4 of the February 27, 1985 agreement shall apply. Following commencement of construction of the ore processing facilities, Owner shall be relieved of any further obligation to replace the reclamation bond.



6. PRIOR AGREEMENTS: All prior agreements not inconsistent with the terms of this Second Amendment of Contract, as set forth in the First Amendment of contract dated February 27, 1985 and the Mining Lease and Option to Purchase Agreement dated August 23, 1984 shall remain in full force and effect between the parties.

DATED this 11<sup>th</sup> day of June, 1985.

5M INCORPORATED, a Utah corporation

By *Jerry Glazier*  
Jerry Glazier, President

Attest:

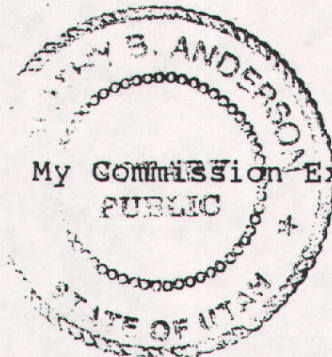
*William T. Sorensen*  
William T. Sorensen  
Secretary

STATE OF UTAH                   )  
  :SS:  
County of WASHINGTON        )

On the 11<sup>th</sup> day of June, 1985, personally appeared before me Jerry Glazier and William T. Sorensen, who did state to me that they are the president and secretary, respectively, of 5M Incorporated and as such are authorized to sign for said corporation.

*Wilbur B. Anderson*  
Notary Public  
Residing in St. George, Utah

My Commission Expires: 8-10-88





KERLEY MINING CHEMICALS, INC.

By Ronald E. Ashcroft  
Ron E. Ashcroft, President

STATE OF Utah )  
COUNTY OF Salt Lake ) :ss.

On the 13 day of June, 1985, personally appeared before me Ronald E. Ashcroft, who being first duly sworn did say that he is the President of KERLEY MINING CHEMICALS INC., and that the within and foregoing instrument was singe in behalf of said Corporation by authority of a resolution of its Board of Directors to sign this Agreement.

Margaret N. Winbrow  
NOTARY PUBLIC  
Residing:

My Comm. Expires: 2/10/90

TBA310c (5M3):jj



EXHIBIT "A"  
to  
AGREEMENT and  
SECOND AMENDMENT OF CONTRACT

AGREEMENT  
AND  
FIRST AMENDMENT OF CONTRACT

This Agreement and Amendment of contract is entered into this 27<sup>th</sup> day of February, by and between 5M INCORPORATED, a Utah corporation herein referred to as "Owner", which has its office and place of business at 279 West State Street, Hurricane, Utah and KERLEY MINING CHEMICALS INC., an Arizona corporation herein referred to as the "Company" which has an office and place of business at Santo Tomas Rt Box 73, Sahuarita, Arizona 85629.

The contract which this agreement shall amend is entitled "Mining Lease and Option to Purchase", dated August 23, 1984, a copy of the cover page of said agreement, together with the table of contents, exhibit list and signature pages are attached hereto as Exhibit A to identify the contract with specificity.

The parties hereto, for good and valuable consideration, the sufficiency of which is herewith acknowledged, hereby agree as follows:

1. REPAYMENT OF ZIONS BANK LOAN: Owner has borrowed from Zions First National Bank, Hurricane, Utah branch, the sum of \$75,000.00, the same which is due on March 14, 1985. Company



agrees to pay off and satisfy the balance due Zions First National Bank on or before February 11, 1985. Repayment of the loan shall constitute payment in full and complete the obligation for purchase of equipment set forth in Section 5 on Page 16 of the August 23, 1984 Agreement.

2. ACQUISITION OF NEW LOANS: The Company shall assist Owner in acquiring a new loan in the sum of \$75,000.00 by providing its guarantee of collection of any judgment which may be entered against Owner as a result of Owner's failure to repay the loan. The parties shall endeavor to acquire a 12 month term for said loan. The application for loan shall be made in writing no later than February 27, 1985. In the event the loan is not approved on or prior to February 28, 1985, this entire Agreement shall be null and void and without effect.

In the event Owner, for any reason, fails to pay such loan timely and upon date of maturity, the Company is required to make payment thereon as party guaranteeing collection, Owner shall owe to Company the amounts paid on said note to Company, together with interest, at the rate of 15% per annum, until paid in full. Furthermore, Owner hereby grants to Company a two per cent (2%) overriding royalty interest in and to production from the mineral properties which are subject of the August 23, 1984 Agreement or a right to payment from first proceeds from any sale, lease or income producing activity whatsoever on the subject property to secure the payment and satisfy any amounts due hereunder from Owner to Company. At such time as the amount



due is paid by Owner to Company, the royalty interest granted herein shall terminate. This provision to secure payment shall be applicable only in the event Company terminates the August 23, 1984 Agreement as amended prior to payment of all amounts due on the promissory note referenced above.

In the event Owner, for any reason, fails to make payment on the promissory note to Zions First National Bank, and the August 23, 1984 Agreement, as amended, is still in effect, Company may pay the same and deduct such payment from the amount owing to Owner in its annual payment next following.

3. REIMBURSEMENT OF TAXES AND INSURANCE PREMIUMS: In the event that Company, for any reason, terminates the August 23, 1984 Agreement as amended during periods for which Owner is still paying taxes and/or liability insurance premiums which the August 23, 1984 agreement as amended requires Company to pay, Company shall reimburse to Owner such amounts, if any, which it should have paid on a pro rata basis, based on the amount of time that Company has held a leasehold interest in the mineral properties.

4. RECLAMATION BOND-TERMINATION OF COMPANY: In the event Company, for any reason terminates the August 23, 1984 Agreement as amended, between the date hereof and June 15, 1985, Owner shall, within twelve months of the date thereof, replace and substitute the bond presently posted with the State of Utah, Department of Oil, Gas and Mining. In the event Owner fails to replace the bond within twelve months, Company shall be entitled to reimbursement thereof under the terms of the security provi-



sion of Paragraph 2 above. This provision modifies the provisions of Paragraph 13 entitled "Reclamation Obligations" of the August 23, 1984 Agreement, and any other part inconsistent with this agreement.

5. MODIFICATION OF PAYMENT DATES: Paragraph 4(b) under the sectional heading, "Minimum Lease Payments" shall be amended as follows: Payment due February 1, 1984 of \$150,000.00 shall be deferred and paid on or before June 15, 1985. The May 15, 1985 payment of \$500,000.00 shall be deferred until June 15, 1985.

6. DRILL DATA: Company shall, within 30 days of the date hereof, provide complete duplicates of all drilling data reports, any and all information on grades and tonnage, metallurgical studies and data as to ore reserves blocked out, inferred and deemed profitable.

The above and foregoing constitute a subsequent change to the August 23, 1984 agreement as authorized in Section 32 thereof entitled "Subsequent Changes" and is limited to the changes and modifications set forth therein. Such subsequent changes shall control and supercede any language inconsistent therewith in the text of the August 23, 1984 Agreement, whether or not specifically referenced herein.

7. RIGHT OF FIRST REFUSAL FOLLOWING TERMINATION: If Company shall fail to make the payment of the total of \$650,000.00 on or before June 15, 1985, and as a result of such default the August 23, 1984 Agreement shall be terminated by Owner, then Company shall, nevertheless, retain a right of first



refusal for a period of one year following the date of termination to match any bona fide good faith offer for sale, lease or other income-producing activity to or from a third party which shall be made on property covered by the August 23, 1984 agreement. Company shall have a period of fifteen (15) days to exercise its right of first refusal on any such offer made after notice, as required herein, on or before November 15, 1985. Thereafter, the exercise period shall be thirty (30) days.

DATED this 27<sup>th</sup> day of Februray, 1985.

5M INCORPORATED, a Utah corporation

By Jerry Glazier  
Jerry Glazier, President

Attest:

By William T. Sorensen  
Secretary

STATE OF UTAH )

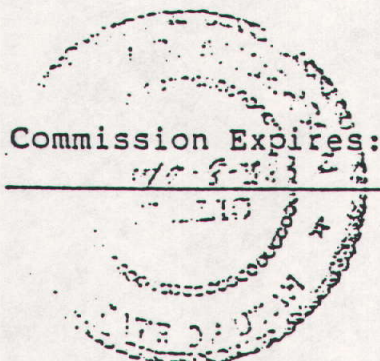
COUNTY OF WASHINGTON )

:ss:

On the 27<sup>th</sup> day of February, 1985, personally appeared before me JERRY GLAZIER and WILLIAM T. SORENSEN, who being by me duly sworn, did say each for himself, that he, the said JERRY GLAZIER, is the President of 5M Inc., and that said WILLIAM T. SORENSEN is the Secretary of 5M, Inc., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said JERRY GLAZIER and WILLIAM T. SORENSEN each duly acknowledge to me



that said corporation executed the same and that the seal affixed is the seal of said corporation.



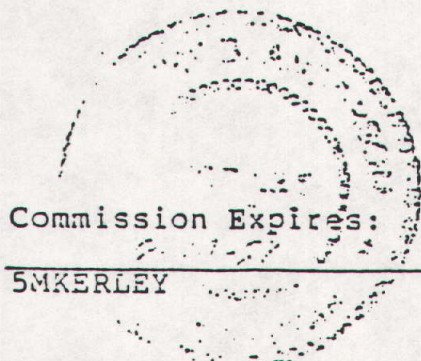
Arthur B. Butler  
Notary Public  
Residing: St George Utah

KERLEY MINING CHEMICALS INC.

By Ronald E. Ashcroft  
Ronald E. Ashcroft, President *RA*

STATE OF Utah )  
County of Wasatch ) :ss:

On the 27<sup>th</sup> day of February, personally appeared before me RONALD E. ASHCROFT, who being by me first duly sworn *RA* did say that he, the said RONALD E. ASHCROFT, is the <sup>VICE</sup> President of Kerley Mining Chemicals Inc. and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors to sign this Agreement.



Arthur B. Butler  
Notary Public  
Residing: St George Utah



EXHIBIT "A" TO PRELIMINARY OPTION AGREEMENT

MINING LEASE

AND

OPTION TO PURCHASE

between

SM, INCORPORATED

and

~~CHENAIL~~  
KERLEY MINING MINERALS, INC.

Re: Silver Reef Mine,

Washington County, Utah

Date: August - 1984



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MINING LEASE AND OPTION TO BUY

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Appendix I	Escrow Instructions
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APPENDIX II

EXHIBIT LIST

EXHIBIT A	Description of all properties subject matter of the Mining Lease and Option to Purchase
EXHIBIT B	Map of all properties subject to lease and/or sale
EXHIBIT C	Bill of Sale - Installment purchase at Minesite \$102,000.00
EXHIBIT D	Copy of Warranty Deed - Tech Sym to 5M, 1977
EXHIBIT E	Copy of Quit Calim Deed - Tech Sym to 5M, 1977
EXHIBIT F	Emily Jane Lease - McMullin to 5M Inc.
EXHIBIT G	Mining Lease Tech - Sym to 5M - 1977
EXHIBIT H	Lease and Option to Purchase Agreement, Eager-Scholzen, June 10, 1977
EXHIBIT I	Title Opinion - Patented Claims - October 31, 1977
EXHIBIT J	Title Opinion - Unpatented Claims - November 1, 1977
EXHIBIT K	Title Opinion - Fee Lands - November 2, 1977
EXHIBIT L	Property Report - July 26, 1964
EXHIBIT M	Utah Deed of Trust with Assignment of Rents and Security Agreement (with attachments 1-6 of Partial Reconveyances)
EXHIBIT N	Memorandum of Lease, 5M - Kerley



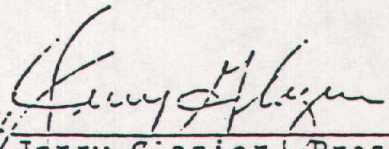
Agreement. The parties shall not be restricted from providing such information to their stockholders and others in the course of routine corporate business.

40. Entire Agreement:

This Mining Lease of even date herewith, Appendix I and II, and Exhibits A through N, contain the entire Agreement, express or implied, of the parties hereto, and the parties agree that no promises or representations of any nature which shall be binding upon them have been made by either of them to the other which are not set forth in these documents.

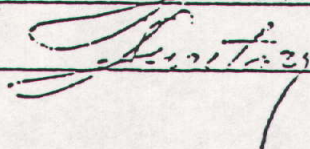
DATED the day and year first above written.

SM, INCORPORATED, a Utah  
corporation,

By   
Jerry Glacier, President

Attest:

By 

Its 



STATE OF UTAH )

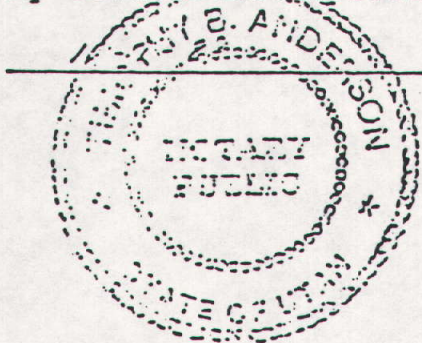
COUNTY OF Washington )

ss

On the 2<sup>nd</sup> day of August, 1984, A.D., personally appeared before me JERRY GLAZIER and WILLIAM T. SORENSEN, who being by me duly sworn did say, each for himself, that he, the said JERRY GLAZIER, is the President of SM, INC., and he, the said WILLIAM T. SORENSEN is the secretary of SM, INC., and that the within and foregoing instrument was signed in behalf of said Corporation by authority of a Resolution of its Board of Directors and said JERRY GLAZIER and WILLIAM T. SORENSEN each duly acknowledge to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Timothy B. Anderson  
Notary Public  
Residing at: 51 West 1st

My Commission Expires:



KERLEY MINING CHEMICALS INC.

By: Ronald E. Ashcroft  
Ronald E. Ashcroft, President



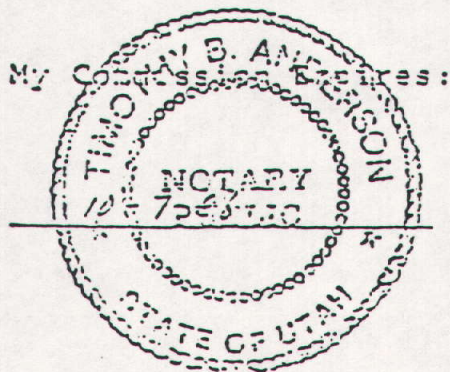
STATE OF UTAH )

COUNTY OF Washington ) SS

On the 23<sup>rd</sup> day of August, 1984, A.D.,  
personally appeared before me RONALD E. ASHCROFT  
and                                 , who being by me duly sworn did say,  
each for himself, that he, the said RONALD E. ASHCROFT is the  
President of KERLEY MINING CHEMICALS INC., and that the within  
and foregoing instrument was signed in behalf of said  
Corporation by authority of a resolution of its Board of  
Directors to sign this Agreement.

                                  
Notary Public

Residing at: St George Utah



*note: this page and the foregoing  
was left unnotarized at the SEC  
closing on August 23, 1984. With permission  
of Mr. Ascheff and Mr. Glayzer I am  
notarizing their signatures which I saw  
them make on August 23, 1984.*  
*- 23 Sept. 1984 Timothy B. Anderson*

0297A  
TBA



EXHIBIT "D"



D

## EXTENSION AGREEMENT

This Extension Agreement is entered into this 31st day of August, 1985, by and between 5M Inc., a Utah corporation, hereinafter referred to as "Owner" which has its office and principal place of business at 279 West State Street, Hurricane, Utah 84737, and Kerley Mining Chemicals, Inc., an Arizona corporation, referred to herein as "Company", which has its office and place of business in Santo Tomas Route 73, Sahuarita, AZ 85619.

This Extension Agreement affects all prior agreements and contracts between the parties, and the parties agree specifically as follows:

1. Owner will extend the due date for performance by Company of certain obligations for payment and performance for a period of 60 days to October 31, 1985.

2. The Company agrees to expend its best efforts to obtain funding commitments within 60 days from date hereof to complete explorations drilling program as outlined in Paragraph 4.A. of the Agreement and Second Amendment of contract dated June 11, 1985.

3. Payment of the \$75,000 originally due to 5M Inc. on September 1, 1985, is extended to October 31, 1985. 5M Inc. has borrowed \$75,000, loan number 9003, from the Zions First National Bank, Hurricane Office, P.O. Box 648, Hurricane, Utah, 84737. Company, within five days of its signature of this Agreement,



will pay interest due on said loan between 5M Inc. and Zions First National Bank, which as of the date hereof, is \$2,401.04. The Company further agrees to pay interest accruing on said note during the period of this sixty-day extension at a per diem rate of \$26.04 or whatever the proper rate shall be charged by the bank. Company agrees to provide a letter to Zions First National Bank reconfirming the continuance of the existing guarantee of said \$75,000 note. Furthermore, the loan acquisition set forth in the Agreement and Second Amendment of Contract, to be performed on or before October 21, 1985, in the sum of \$200,000.00 will be extended to the October 31, 1985, due date.

4. By this agreement, Company releases three 12,800 gallon storage tanks, described as item number 2 on the Bill of Sale attached to the original agreement dated August 23, 1984 between the parties. Owner shall have the right to sell such tanks free of any ownership interest or encumbrance of Company. Furthermore, Company agrees to provide Bills of Sale with respect to the three tanks.

5. Company agrees to pay within five days of signature its prorated share, amounting to \$ 929,84, of current liability insurance due on the mining property.

6. The parties hereto agree that in the event any payment or performance on the part of Company is not made timely, pursuant to the extensions granted in this Agreement, then this Agreement shall terminate without notice as of the date of such failure to make payment or performance and the rights of the



Company to lease purchase the mineral properties described in the Mining Lease and Option to Purchase, dated August 23, 1984, shall also terminate as of the date of such failure.

DATED this 10th day of September 1985.

5M INCORPORATED, a Utah corporation

Attest:

Jerry Glazier  
JERRY GLAZIER, President

William T. Sorensen  
William T. Sorensen, Secretary

STATE OF UTAH )

:ss:

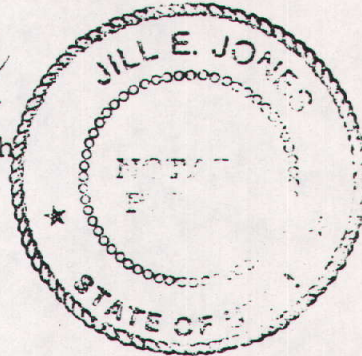
COUNTY OF WASHINGTON )

On this 10th day of September 1985, personally appeared before me Jerry Glazier, President of 5M Inc., who signed the foregoing document for and in behalf of said corporation and stated that he is empowered to do so.

Jill E. Jones  
Notary Public

Residing in St. George, Utah

My Commission Expires: 7-10-88



KERLEY MINING CHEMICALS INC.

By

Ronald E. Ashcroft, President

STATE OF ARIZONA )

:ss:

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1985, personally appeared before me Ronald E. Ashcroft, President of Kerley Mining



Chemicals Inc., who signed the foregoing document for and in  
behalf of said corporation and stated that he is empowered to do  
so.

.....  
\_\_\_\_\_  
Notary Public

Residing in .....

My Commission Expires:

\_\_\_\_\_TBA885Y



EXHIBIT "E"





STATE OF UTAH  
NATURAL RESOURCES  
Oil, Gas & Mining

Norman H. Bangerter, Governor  
Dee C. Hansen, Executive Director  
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

June 12, 1986

Mr. John Kuppe  
Vice President, Finance  
Kerley Industries  
Santo Tomas Route, Box 73  
Sahuarita, Arizona 85629

Dear Mr. Kuppe:

RE: Status and Action Required for the Silver Reef Mine,  
ACT/053/022, Washington County, Utah.

The permitting status of the Silver Reef Mine indicates that a reclamation surety bond was posted by Kerley Industries in 1984 (insufficient at this time), and that a MR-1 form was submitted to the Division on June 21, 1985 (not yet approved).

A letter requesting the posting of an additional bond amount was sent September 27, 1985 to Ronald Ashcroft from Pamela Grubaugh-Littig. The reply letter from Kerley Industries (dated February 10, 1986) stated that an increased surety would be posted by April 1986. The updated surety has not been submitted to the Division as of this date.

The Division requested an updated MR-1 form (letter from Steve Cox to Howard Urband of Kerley Industries, dated April 19, 1985) and an updated and unsigned MR-1 form was submitted on June 21, 1985. No further action has been undertaken.

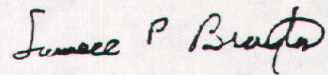
The Division requests immediate posting of the escalated reclamation bond amount by July 1, 1986 (\$61,728 in 1987 dollars) as well as a letter of explanation outlining the future plans for the Silver Reef Mine.



page 2  
Mr. John Kuppe  
ACT/053/022  
June 12, 1986

The Division may need to bring this matter before the Board of Oil, Gas and Mining requesting complete and final reclamation if this situation remains unresolved. If you have any questions, please call me.

Sincerely,



Lowell P. Braxton  
Administrator

PGL/djh  
Copy: John Whitehead  
Pamela Grubaugh-Littig  
Jerry Glazier, 5M Inc.  
8808R-33



EXHIBIT "F"



# JONES, WALDO, HOLBROOK & McDONOUGH

A PROFESSIONAL CORPORATION

## ATTORNEYS AND COUNSELORS

DONALD B. HOLBROOK  
CALVIN L. RAMPTON  
W. ROBERT WRIGHT  
RANDON W. WILSON  
RONALD J. OCKEY  
JACK LUNT  
K. S. CORNABY \*  
EDWARD J. McDONOUGH  
JAMES S. LOWRIE  
RONNY L. CUTSHALL  
MICHAEL R. MURPHY  
CHRISTOPHER L. BURTON  
LARRY C. HOLMAN  
WILLIAM B. BOHLING  
D. MILES HOLMAN  
ROBERT S. McCONNELL  
GLEN D. WATKINS \*  
THOMAS E. K. CERRUTI  
CRAIG R. MARIGER  
RICHARD B. JOHNS  
DAVID B. LEE \*  
BRUCE E. TITUS \*†‡  
L. R. CURTIS, JR.  
GRETTA C. SPENDLOVE  
TIMOTHY B. ANDERSON  
GREGG I. ALVORD  
LARRY A. STEELE  
SUZANNE WEST

ELIZABETH M. HASLAM  
L. JOHN LEWIS  
JOELLEN McGUIGAN  
G. RAND BEACHAM  
RANDALL N. SKANCHY  
JANET C. GRAHAM  
BRIAN W. STEFFENSEN  
BRUCE E. BABCOCK  
CATHERINE A. RIBNICK \*  
DAVID R. MONEY  
M. DIANE JASINSKI  
GEORGE W. PRATT  
JAMES W. STEWART  
GEORGE E. HARRIS, JR. §  
PAUL M. HARMAN  
SUE VOGEL  
EVAN A. SCHMUTZ  
BRENT A. BOHMAN  
VIRGINIA S. SMITH  
DALE R. CHAMBERLAIN  
NANCY J. McMILLIN  
WILLIAM C. GIBBS  
DIXON F. LARKIN  
SCOTT F. SQUIRE  
EDWARD R. MUNSON  
DAVID L. JONES  
ROBERT A. GOODMAN

SHEEKS & RAWLINS 1875  
RAWLINS & CRITCHLOW 1891  
RAWLINS, THURMAN, WEDGEWOOD & HURD 1897  
RAWLINS, RAY & RAWLINS 1907  
INGEBRETSEN, RAY & RAWLINS 1929  
INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN 1941  
INGEBRETSEN, RAY, RAWLINS & JONES 1948  
RAY, RAWLINS, JONES & HENDERSON 1949

SALT LAKE CITY OFFICE  
1500 FIRST INTERSTATE PLAZA  
170 SOUTH MAIN STREET  
SALT LAKE CITY, UTAH 84101  
TELEPHONE (801) 521-3200  
TELEX 324898

WASHINGTON, D.C. OFFICE  
SUITE 350  
1001 22ND STREET, N.W.  
WASHINGTON, D.C. 20037  
TELEPHONE (202) 298-5950  
TELECOPIER (202) 293-2509

RESTON OFFICE  
1810 MICHAEL FARADAY ROAD  
SUITE 102  
RESTON, VIRGINIA 22090  
TELEPHONE (703) 437-8242

ST. GEORGE OFFICE  
ONE SOUTH MAIN STREET  
ST. GEORGE, UTAH 84770  
TELEPHONE (801) 628-1627

June 27, 1986

IN REPLY REFER TO:

OF COUNSEL  
JOSEPH S. JONES  
ROGER J. McDONOUGH  
FRANK ANTHONY ALLEN  
ALDEN B. TUELLER

\*ADMITTED AND RESIDENT IN WASHINGTON, D.C.  
†ADMITTED AND RESIDENT IN VIRGINIA  
‡ADMITTED IN MARYLAND  
§ADMITTED IN MISSOURI ONLY  
\*REGISTERED PATENT ATTORNEY

St. George

John Kuppe  
Vice-President, Finance  
Kerley Industries  
Santo Tomas Route - Box 73  
Sahaurita, AZ 85629

Re: Kerley - 5M / Silver Reef Mine

Dear Mr. Kuppe:

Yesterday I received a copy of the June 12, 1986, letter (copy enclosed) from the State of Utah Natural Resources, Oil, Gas & Mining Division to you regarding the status of the bond on the Silver Reef Mine in Washington County, Utah. From the text of the letter it appears as though there have been ongoing discussions between your Company and the State of Utah regarding this matter as late as April of this year. As you know, your Company's lease on the property terminated as of November 1, 1985, and I am, therefore, perplexed that you would still be engaging in ongoing discussions with the State Division of Oil, Gas & Mining regarding the property without fully informing 5M of the problem.

As of this late, 5M has received a copy of the June 12th letter with the understanding that it must post a bond in excess of \$11,000.00 on or before July 6, 1986, or risk the cancellation of its mining plan. Furthermore, apparently a letter of intended future mining plans for the Silver Reef Mine requested at an earlier date from you by the State, must also be submitted by the July 1st deadline.

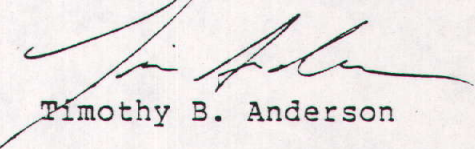


John Kuppe,  
Kerley Industries  
June 27, 1986  
page two

The last minute notification to 5M of these problems has resulted in considerable difficulty. At present 5M is under extreme financial stress, and is unable to raise sufficient money to cover the bond request made by the State. I, therefore, request that your Company resolve matters with the State immediately by posting the bond in order to avoid substantial damages that will arise should the mining permit be revoked. Specifically, 5M is presently in negotiation with several entities regarding the disposition of the Silver Reef Mine and representations have been made that the mining permit is in place and is fully valid. In the event negotiations were to break down due to cancellation of the mining permit, 5M would hold Kerley responsible.

Again, this matter deserves your immediate attention in order to avoid a substantial claim against your Company. Please advise us as to who is representing you on this matter in order to expedite resolution of the problem.

Respectfully,  
JONES, WALDO, HOLBROOK & McDONOUGH



Timothy B. Anderson

TBA:jd1  
Enclosure  
A3-07



EXHIBIT "G"





*Cover letter*

5M, INC., P.O. BOX 752, HURRICANE, UTAH 84737 (801) 635-4473

March 25, 1988

State of Utah  
Natural Resources  
Division of Oil, Gas & Mining  
355 North Temple  
3-Triad Center - Suite 350  
Salt Lake City, Utah 84180

Attn: Mr. Lowell P. Braxton  
Administrator, Mineral Resource  
Development & Reclamation Program

Dear Mr. Braxton:

With reference to your letter to us dated March 10, 1988, regarding the permitting and reclamation status of the Silver Reef mine located in Washington County, Utah, and including the meetings previously held on February 17, 1988, with members of your staff, Mr. David Wham and Frank Filas, we are, herewith, submitting to you the Reclamation Plan for the Silver Reef minesite, involving the present onsite facilities and developments.

We have now petitioned the Board of Oil, Gas, & Mining, requesting that the monies recently forfeited by Kerley Mining & Chemicals, Inc. be retained by the Division of Oil, Gas & Mining as reclamation surety required for keeping current a standby permit on the Silver Reef mine which is presently under a state of suspended operations.

It is the intent of 5M, Inc. to work diligently with the Division of Oil, Gas & Mining, and staff members, in obtaining approval of our current Reclamation Plan. Also, this letter is to notify you that cleanup and reclamation efforts are now well in progress on the property.

We look forward to again meeting with your staff members here in Hurricane this next week, and to formalize the objectives of this reclamation work.

We thank you for your cooperation and assistance with



this project. Should you or your staff have any questions, or need for any additional information, please feel free to contact us.

Very sincerely,



Jerry Glazier,  
President

JG:s

- ENCL: 1) Reclamation Plan  
2) Copy of Petition Letter



5M, Inc.

RECLAMATION PLAN

Silver Reef Mine  
Washington County, Utah

Contents:

25 March 1988:

- a) 5M, Inc. letter to Mr. Lowell P. Braxton,  
Administrator, Mineral Resource Development  
& Reclamation Program

25 March 1988:

- b) 5M, Inc. RECLAMATION PLAN - Silver Reef Mine  
Washington County, Utah

25 March 1988:

- c) 5M, Inc. letter to the Utah State Board,  
Division of Oil, Gas & Mining.





5M, INC., P.O. BOX 752, HURRICANE, UTAH 84737 (801) 635-1173

March 25, 1988

State of Utah  
Natural Resources  
Division of Oil, Gas & Mining  
355 North Temple  
3-Triad Center - Suite 350  
Salt Lake City, Utah 84180

Attn: Mr. Lowell P. Braxton  
Administrator, Mineral Resource  
Development & Reclamation Program

Dear Mr. Braxton:

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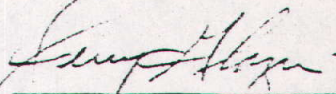
We thank you for your cooperation and assistance with



Natural Resources  
Division of Oil, Gas & Mining  
Page 2

this project. Should you or your staff have any questions, or need for any additional information, please feel free to contact us.

Very sincerely,



Jerry Glazier,  
President

JG:s

ENCL: 1) Reclamation Plan  
2) Copy of Petition Letter



## RECLAMATION PLAN

Silver Reef Mine  
Washington County, Utah

\*\*\*\*\*

1. Maintenance Building:  
Clean up all outside debris and leave as is for future use.
2. Powder Magazine:  
Leave as is, empty and secured.
3. Mine & Access Roads:  
Clean up and leave as is for security patrol, assessment work, and property access.
4. Pachuca Tanks:  
Clean up surrounding debris and leave standing upright for future use.
5. Open Pit Area:  
Close the vertical shaft and leave the remaining open pit as is until such time as mining operations are resumed, or further reclamation undertaken.
6. Agglomeration Circuit, Pad, & Sprinkler System:  
Remove the non-fixed PVC, sprinkler heads and pipe, and condition and maintain equipment for future use.
7. Scrap Yard:  
Remove and clean up.
8. Small Transformer Bldg., and Fenced Substation:  
Clean up all debris, make repairs to building and fence, and leave in place.
9. 50,000 Ton Leach Pad and Sprinkler System:  
Remove all debris, stack pipe and sprinklers, and leave as is.  
  
Note: The ore on the leach pad still retains 50% of the economic values which can be leached and processed in future operations.



10. 2-Asphalt Collection Ponds:

Clean up all debris and leave as is.

Note: Ponds provide reservoir for rain runoff and should be maintained for this purpose until mining operations are resumed.

11. 4-Precipitation Tanks:

Clean up all breakage, PVC pipe and other debris, and leave as is until mining operations are resumed.

Note: This mill area can readily be reactivated for future milling purposes and would be cost prohibitive to remove and later reinstall upon resumption of operations.

12. Various Small Agitation & Thickner Tanks:

Clean up all broken pipe and debris and leave as is for future milling operations.

13. Small Rectifier Building:

Clean up all debris, secure and leave in place.

14. Electrowinning Cells & Spiral Precipitators:

Dewater cells, clean up all broken pipes and debris, and leave as is.

15. Main Sub-station:

Leave as is for future use.

16. Ore Stockpiles:

Leave in place for future milling operations.

17. 2-Monitoring Wells:

Leave in place.

18. Power Lines & Poles:

Clean up any debris, maintain and leave in place.

19. Fencing & Gates:

Make repairs as necessary; post, and leave in place.

Note: Necessary for the security of the private property.



20. Fire Assay Building:

Clean up debris, post sign: "No Dumping", and leave in place for future use.

21. Old Mill Site:

This historic mill has been disassembled and almost entirely removed. However, at some future time, 5M, Inc. has plans to restore this old mill and mill site. For the present, clean up debris and leave as is.

22. Doyle Shaft:

Seal and remove head frame.

Note: This reclamation is now in progress and near completion.

23. Big Hill Shaft:

Make repairs to fence and leave as is.

24. Bore Holes:

Close and seal.

25. Various piles of Scrap Iron & Precipitates:

Remove approximately 25 tons of the coarse scrap. Leave the remaining fine shredded iron and copper precipitates. These materials are valuable for their copper and silver content and for future cementation requirements.

NOTES to Reclamation Plan:

- 1) 27.4 acres are involved in the above reclamation items, and is further detailed on the current Reclamation Bond Map attached hereto.
- 2) Certain of the above items may require an extension of time to complete the reclamation work beyond May 15, 1988. It is requested some additional time consideration be given to complete the following items:

Item No. 7 - 20 - 21 - 24 and 25.





5M, INC., P.O. BOX 752, HURRICANE, UTAH 84737 (801) 635-4473

March 25, 1988

STATE OF UTAH  
Natural Resources  
Division of Oil, Gas & Mining  
355 West North Temple  
3-Triad Center - Suite 350  
Salt Lake City, Utah 84180

Gentlemen:

This letter is a formal petition to the Board of Oil, Gas & Mining with reference to the disposition of the recently forfeited Kerley Mining & Chemicals, Inc. reclamation bond covering mining operations at the Silver Reef mine in Washington County, Utah.

5M, Inc. is the owner of the Silver Reef mine near Leeds, Utah, and is presently working with the Utah Reclamation Division of Oil, Gas & Mining, under direction of Mr. Lowell P. Braxton and his staff, for the purpose of completing a current Reclamation Plan under which the Silver Reef mine would receive a standby permit status.

Sometime ago, 5M, Inc. contracted with Kerley Mining & Chemicals, Inc., an Arizona company, to participate as the designated operator on behalf of both parties at the Silver Reef mine. Part of the consideration to 5M, Inc. was that Kerley, as designated operator, would post with the Division of Oil, Gas & Mining a cash reclamation bond in the amount of \$55,210 as reclamation surety on behalf of Kerley and 5M, Inc. Kerley reserved the right to terminate their position as designated operator, if necessary, and to forfeit their rights in the project.

Due to inhouse problems within their company, Kerley was ultimately forced to dissolve their total mining division. In doing so, 5M, Inc.'s agreement with Kerley specifically included certain conditions and considerations to 5M, Inc. in which Kerley had to be current before termination of their obligations would be totally effective. The termination of Kerley by 5M, Inc. proceeded without Kerley being current as to certain work commitments and money payments. Therefore, 5M, Inc.'s position at this time is that the Kerley reclamation bond is part of the considerations and money commitments due 5M, Inc. by Kerley as liquidated damages.



Natural Resources  
Division of Oil, Gas & Mining

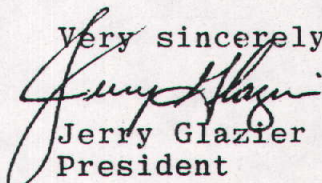
It is requested that the bond monies now in the General Fund be returned and placed again with the Division of Oil, Gas & Mining for the exclusive purpose of providing reclamation surety once again for the Silver Reef mine.

In those projects where 5M, Inc. has posted cash reclamation bonds in the form of CD's, it has been jointly in the name of the Federal or State agency and 5M, Inc., with the interest thereon accruing to 5M, Inc. In this particular case, however, we would not be opposed to the Division offsetting the inflation factor by an amount equal to the interest accruing thereon.

The Reclamation Division is now receiving 5M, Inc.'s updated Reclamation Plan and will require reclamation surety be posted on the Silver Reef mine within 60 days after the Division has approved the plan.

At this time it is requested that the Board give favorable consideration to the above matter within the time frame compatible to allow 5M, Inc. to use the money in favor of the reclamation surety bond requirement stated above.

We appreciate your assistance and help in this matter. Should you have any questions or reason to communicate with us further, please feel free to contact us.

Very sincerely, -  
  
Jerry Glazier  
President

JG:s

cc: Lowell P. Braxton,  
Administrator, Mineral Resource  
Development & Reclamation Program



EXHIBIT "H"



STATE OF UTAH  
NATURAL RESOURCES  
Oil, Gas & Mining

RECEIVED APR 12 1988

Norman H. Bangert, Director  
Dee C. Hansen, Executive Director  
Dianne R. Nelson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

April 7, 1988

Mr. Jerry Glazier  
SM, Inc.  
P.O. Box 752  
Hurricane, Utah 84737

Dear Mr. Glazier:

Re: Reclamation Plan, Silver Reef Mine, M/053/002, Washington  
County, Utah

Thank you for the Silver Reef Reclamation Plan which was given to Holland Shepherd and Frank Filas of my staff on March 31, 1988. The interim clean up measures proposed in Section b are approved. An extension for completion of Items 7, 20, 24, and 25 is hereby granted. This work is to be completed by July 1, 1988.

The Division will not require a deadline for the clean up of the old mill (Item 21). This area is prelaw and is not under our jurisdiction. We do, however, commend you for the work which has been done at the old mill site and hope that you will complete the clean up of this area.

As Frank Filas indicated on site, we will require that you submit a plan for final reclamation of the site. Some portions of the mine site such as roads, buildings, and power lines may not have to be included in the final reclamation if they have a continuing use after mining is completed.

The petition for reassignment of the forfeited bond is not in the proper form for presentation to the Board. I believe that you have since received the information necessary for reformatting this petition. Lawyer representation will be necessary at the Board meeting. I also recommend that you cover in more detail the agreements between SM and Kerley which you make mention of in the fourth paragraph of the petition.

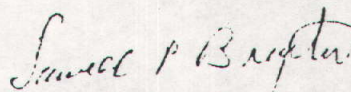


Page 2  
April 7, 1988  
Jerry Glazier

Submittal of the final reclamation plan should be made by April 18, 1988. If this deadline cannot be met, the Division must receive prior notification justifying the need for the extension. The formal petition for bond reassignment can be made once the final reclamation plan has been submitted and tentatively approved by the Division.

Thank you for your cooperation.

Sincerely,



Lowell P. Braxton  
Administrator, Mineral Resource  
Development and Reclamation Program

FF

cc: F. Filas  
W. Hedberg  
B. Roberts  
M. Anderson  
H. Shepherd